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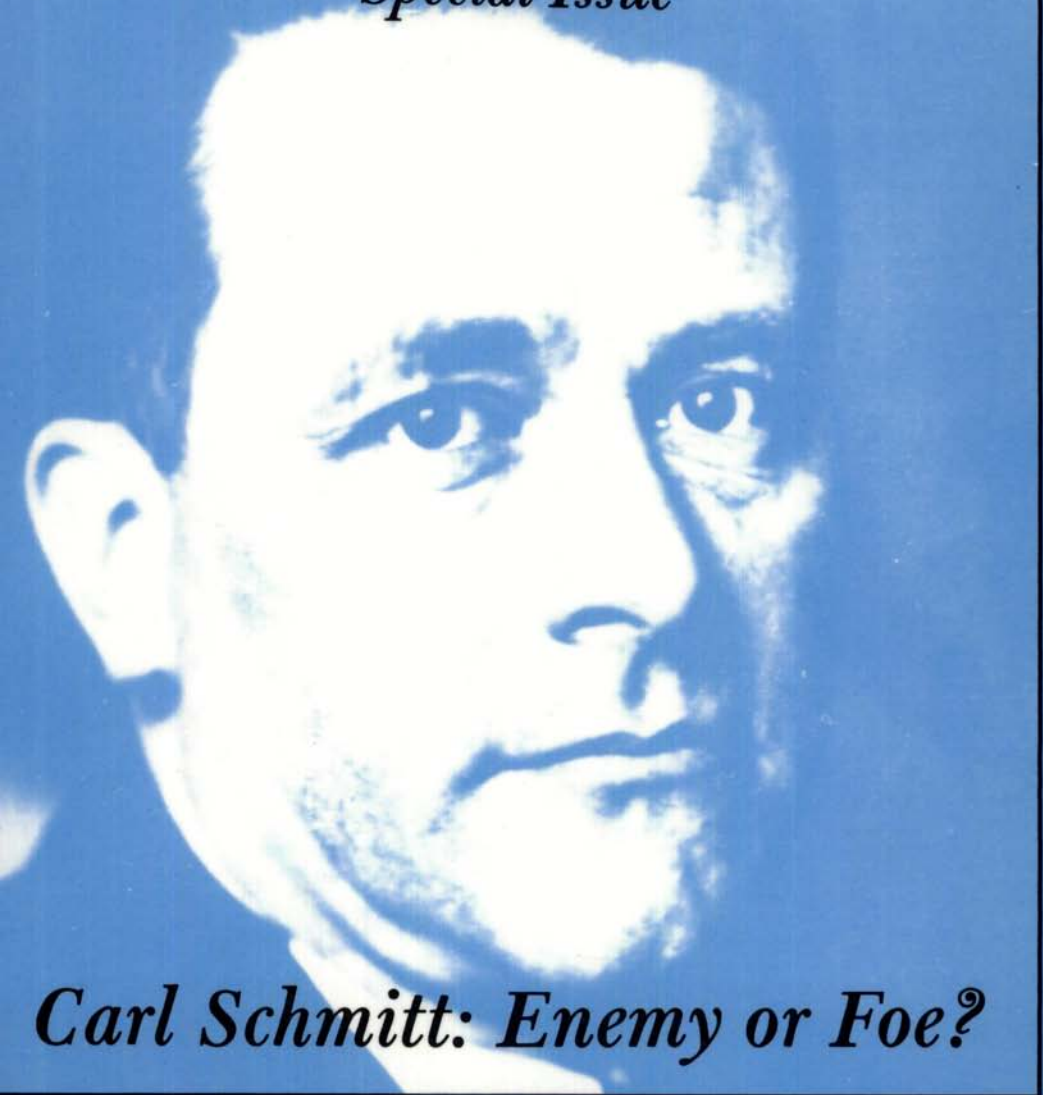

## *Carl Schmitt: Enemy or Foe?*

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# Telos
## *A Quarterly of Critical Thought*

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*A Quarterly of Critical Thought*

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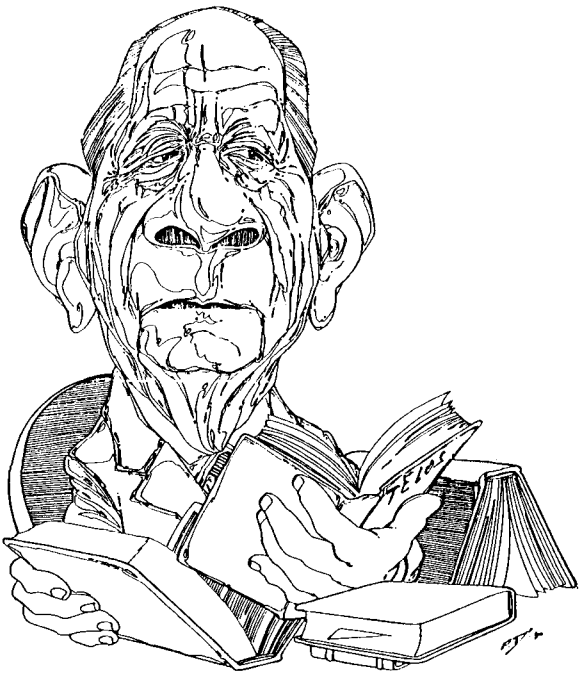


***The Old Katechon***

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# *Introduction to Carl Schmitt*

Why Schmitt? Why now?

The need to anticipate these questions already betrays an abnormal state of affairs. Carl Schmitt is an extremely controversial figure, compromised by his collusion with Nazism at the peak of his career and throughout his life a European conservative whose authoritarian political objectives have never been in doubt. So what is a nice leftist journal like *Telos* doing in a theoretical dive like this? Having successfully protected our political virtues from corruption by the totalitarian undercurrents of the various Marxisms and Marxism-Leninisms, have we now succumbed to one of the few alternatives that made the worst Stalinism palatable to a whole generation of otherwise highly sophisticated intellectuals like Bloch and Lukács?

Critical theory today is caught between a political paralysis resulting from the inability of the first generation of thinkers to transcend well-known antinomies, and a regression to a naive conformist liberalism brought about by the pollution of communication theory. Whatever one concludes from the debate on Schmitt and the Frankfurt School (*Telos* #71), it convincingly demonstrates that not only has critical theory always had difficulties articulating a meaningful political theory, it has also been stymied by precisely those issues raised by Schmitt. However one views this situation, Schmitt's work — ranging all the way from political romanticism to guerrilla warfare — is clearly one of the most important contributions to 20th century political theory and deserves to be seriously confronted.

Because of his past, many on the left prefer to ignore Schmitt altogether. But why should the left shrink from learning from its opponents, especially in view of the recent success of the right in appropriating and redeploying — in a qualitatively different political framework — traditional leftist ideals like "human dignity," "autonomy," "freedom," "equality," etc.? Strange as it may seem, some of Schmitt's ideas throw much needed light on questions central to the so-called crisis of the left — questions which, unless answered soon, will only lead to the further decline of an already rapidly fading movement. It is for this reason that Schmitt should be read carefully but, as Benjamin



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showed, against the grain, since the profundity of his thought is matched only by the intensity of his conservatism. His analysis addressed concretely the problems of his time with powerful theoretical tools. This is why, starting from such crucial junctures as Schmitt's challenge to liberal-democratic theory, an immanent critique of his analysis of concepts like super-legality and pseudo-universality may pave the way for a new perspective on a number of issues.

In Schmitt's last published work, "The Legal World Revolution," written in 1978 when he was almost 90 years old (and printed in this issue to disabuse readers of any illusions about his politics and outlook), he uses his extraordinarily broad juridical knowledge in an effort to discredit Carrillo's ideas about Eurocommunism (a politically moribund but still strategically viable proposition when the essay was written), by associating its strategy with that of the Nazis and the fascists in their rise to power. Even such a politically shortsighted maneuver — shortsighted at least in its misreading of Eurocommunism as a real threat to constitutional democracy, rather than as a handicapped alternative to the equally lame socialism of Suarez, Mitterrand and Craxi — exhibits a conceptual wealth that can only enhance the outlook of any reader patient enough to plow through it. In this essay Schmitt returns to themes he articulated during his Weimar days. He reinterprets the seemingly extraneous juridical concept of super-legality — the imposition of strengthened norms to prevent harmful tampering with constitutional provisions — to warn about the destabilizing implications of pseudo-universal ideologies. Transposed to the political realm, super-legality refers to the deployment of ethical norms held to be so overpowering as to transcend any existing legality. Systematically elaborated, the concept of political super-legality provides considerable insights both into Schmitt's conservatism and into some problems with left-liberal thought.

The notion immediately raises one of the main problems associated with the decline of the *jus publicum Europaeum* (the order of European states that obtained from the 16th to the 20th century): the return of the concept of the foe discussed by Schwab. The *jus publicum Europaeum* emerged from the religious civil wars and made it possible for enemies to be treated as equals rather than as criminals. For Schmitt, such movements as communism, fascism and Nazism, which posit super-legal ideologies of progress, nation or race to totalize the political dimension (thereby once again degrading and dehumanizing the "other" or the enemy into a foe — be it the "bourgeois class enemy," the "alien" or the "Jew") generate secular civil wars analogous to

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earlier religious wars. Here, of course, Schmitt is clearly seeking once again to distance himself as much as possible from a Nazi regime he once embraced, and to further demystify his old nemesis —communism. Nevertheless, the concept of super-legality should not be discarded. On the contrary, beyond Schmitt's restricted use it exhibits considerable analytical power for explaining new and perplexing socio-political predicaments that have eluded traditional leftist theory, particularly in the US.

The pseudo-universality postulated by political super-legality's manicheanism intensifies the political by employing a *foe* criterion which destroys the legitimacy of the "other" (now degraded to the level of pathology, criminality or subhumanity). It not only rules out any possibility for compromise, it also eliminates any need for critical scrutiny and systematically occludes what are otherwise garden varieties of objective conflicts among competing groups. The clearest example is "real existing socialism," where the *de jure* transcendence of the traditional class struggle with the dispossession of the bourgeoisie led to the development of new *de facto* class divisions all the more difficult to overcome because an official *Ideenkleid* prevents their very thematization. As a result, both the privileges of the *Nomenklatura* as well as the utter degradation of the peasantry ended up concealed under the alleged hegemonic and homogenizing rule of the working class. Less discussed — and therefore less "obvious" because much closer to home and not readily instrumentalizable in what remains of the Cold War — is the metamorphosis the left has undergone in the US as a result (among other things) of the saturation of its theoretical outlook with political super-legality.

While entirely relegated to the *legal* domain, where it often becomes formal and abstract, the obsessive left-liberal pursuit of egalitarianism as a super-legal norm has debilitating consequences both in theory and in practice. (Adorno's account of *identity logic* seeks to uncover similar problems but, unlike in Schmitt, the analysis becomes radically depoliticized when the culprit is traced first to Enlightenment ideology and then to the very structure of Western thinking). Relegating particularity, specificity and difference to a degraded private sphere associated willy-nilly with the irrational or its functional equivalent — temporary social irregularities — the left-liberal attempt to institutionalize *formal* and *abstract* equality everywhere and at all costs has helped bring about, as an unintended consequence, a substantial growth of *concrete* inequality all the more problematic because of its increasing ineradicability. A permanent underclass, managed by relatively privileged

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bureaucrats whose position and privilege are largely a function of the *permanence* of that very underclass they are meant to help, finds itself burdened not only with abject misery but also with an externally mediated articulation of its problems that almost rules out any possibility of ever transcending its present condition. Paraphrasing political theology: the secularized priesthood of the official left sanctifies this state of affairs from its academic cloister, where it has retreated from active political struggle, by calling for more and better management by a Welfare State/Church run by their New Class brethren to enforce an increasingly elusive equality. The super-legal imperative of equality-no-matter-what succeeds in blinding leftist theory to new social conflicts which, to the extent that they remain unproblematized, can only remain unsolved or, worse yet, become intensified.

Within this context of generalized super-legality on the left, there is also little room in theory for treating opponents as equals, which explains the left's unwillingness and inability to confront controversial figures like Schmitt. Here again, Schmitt's conceptual machinery, *malgré lui*, helps throw some light on the source of this dogmatism. Just as totalizing concepts like "humanity" rule out the possibility of meaningful politics, by not allowing for an "other" which could be regarded as an equal and against which it makes sense to wage a clean fight, a leftist outlook mired in super-legality cannot seriously entertain the possibility that a right-wing theory (much less one tainted by Nazism) may need to be taken seriously or could even be correct in some instances. This is why thinkers like Schmitt are readily dismissed as practically beneath contempt. The unfortunate consequence is not so much the consignment of interesting figures and ideas to an undeserved obscurity, but the left missing a chance to learn from its opponents and thereby regain a vitality it has lost since retreating into academia.

Having established this much analytical potential, however, does not automatically lift Schmitt's concept of political super-legality out of its problematic conservative framework. The sharp distinction between the political and the juridical ends up excluding ethics from any acceptable social theory and thereby protects the *status quo* from any fundamental axiological challenge. The presumably neutral methodological interdiction conceals the nomological character of his conservative predilections. In the final analysis, he does not succeed in rigorously differentiating political super-legality from run-of-the-mill legitimacy and thus paints himself into a peculiar conceptual corner. By the time Schmitt came to write "The Legal World Revolution," he had presumably de-emphasized his earlier unrelenting critique of

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parliamentary democracy — probably for lack of any viable alternatives much better than the Führer — and downgraded his program to the more mundane task of devising juridical super-legal constitutional blocks to any qualitative change — even when they are supported by absolute electoral majorities. Fully consistent with his conservative instincts, however, Schmitt could pull this off only by freezing "legitimacy" out of any meaningful historical dynamic and by demonizing "political super-legality" as a misguided attempt to retheologize 20th century political realities. Essentially, the shift from monarchical dynastic legitimacy to Woodrow Wilson's constitutional democratic legitimacy is accepted, but *that is it*. No more changes in legitimacy are to be allowed. While Spinoza's theological-political *natura naturans* is accepted in Abbé Sieyès' transubstantiated form of *pouvoir constituant*, and even Max Weber's charismatic legitimacy is given a break, not a millimeter is to be yielded to any form of communism or socialism as secularizations of the Hegelian *Geist*. The old *katechon* barricades himself behind the constitution to prevent any further changes in the *status quo*. If for Adorno progress went from Adam and Eve to the atom bomb and Auschwitz, for Schmitt it threatens to terminate in a *world police state* to be opposed at all costs.

Be that as it may, and notwithstanding the juridical erudition of his presentation, Schmitt has not convincingly differentiated between a *legitimacy* seen approvingly as the foundation of existing constitutional systems, and *political super-legality* as a potential future legitimacy which may or may not succeed in establishing itself. All Schmitt wants to do is make it tougher for the latter to do so, and the only rational justification he can ultimately provide is his preference for order. The deployment of super-legal visions is problematic in that it leads to the sort of previously-described predicaments, but it should not thereby be excluded in principle. Without such visions qualitative social change would be impossible. The risk cannot be avoided without paying too high a price — a price willingly paid by conservatives such as Schmitt, but unacceptable to anyone left of Burke. All one can do to minimize this risk is to make sure the process whereby a super-legal vision seeks to turn into a new legitimacy be subjected to careful scrutiny. Thus Schmitt's call for *juridical* super-legality is to be heeded, while his condemnation of its *political* counterpart is to be rejected.

Schmitt's conservatism becomes even more problematic when one considers his account of sovereignty. Legitimacy as the foundation of legality must necessarily rest on external community standards, which it subsequently codifies into a legal structure. Were the community in

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question *homogeneous* in ethnic, linguistic, religious, etc. matters, then the solution would be relatively simple. The translation of such a coherent body of *legitimate* postulates into a *legal* code mechanically enforced by an administrative apparatus and overseen by an equally legitimate sovereign power would not only be easy, it would also presumably result in a smoothly functioning political-legal system. But what happens when such homogeneity has been irreversibly fractured into the heterogeneous demographic amalgams making up almost every country in the world today? What constitutes the public interest is no longer clear. The legal system becomes mired in proceduralism in the effort to effectively mediate rapidly multiplying conflicts, and the collective will is increasingly difficult to attain. This was what precipitated Schmitt's argument in *The Crisis of Parliamentary Democracy*. How sovereignty can be reestablished in this context is not clear. Here is where authoritarian options become increasingly attractive to Schmitt, who does not waste much time investigating the *possibility* of different forms of democracy because he sees them all in terms of Rousseauean identities. Once again, the deadening weight of the past limits too much the contingency of the present and the openness of the future.

Schmitt's conservatism is also clear in the way he develops his analysis of international relations, which poses even more disturbing questions for critical leftist theory. Having frozen modern legitimacy out of historical contingency in order both to eternalize and protect it against any possible qualitative challenges by radical alternatives (now checkmated out of the picture as super-legal theological throwbacks), Schmitt further complicates things by pointing out the increasingly problematic nature of the traditional notion *of national sovereignty* as a result of the decline of the *jus publicum Europaeum*. His theory of the rise of *Grossräume*, elaborated in the article on "American Imperialism and International Law," both provides insights into the logic of the Cold War and reveals scores of new problems for a critical approach to international politics.

As Schmitt argues, the *jus publicum Europaeum* was based on the state's monopoly of decisions concerning the waging of war, friend and enemy, and the recognition of the enemy as an equal (i.e., not a criminal). Contributing to the decline of the old order was the introduction of the pseudo-universalism of both the US and the USSR and their role in criminalizing war and the enemy — a process that began after WWI and reached its super-legal conclusion at the end of WWII. This situation precipitated the creation first of the League of Nations,

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then of the United Nations. For Schmitt, the very idea of world government is chimerical, since it would entail the end of politics by transcending the fundamental distinction between friend and enemy. The pseudo-universalism of such international organizations contradicts the reality of politics both on the level of sovereign states and on the level of superpowers. Far from trying to sanitize the Nazi notion of *Lebensraum* (as some American critics of Schmitt have intimated), Schmitt sought to generalize the disappearing *jus publicum Europaeum* into a kind of *jus publicum mundi* more in tune with contemporary international realities. Schmitt had no illusions about the chances of instituting such a new order. The point, however, is that the quandary remains: the *jus publicum Europaeum* is rapidly fading and nothing comparable has yet taken its place.

The new predicament is that now *de facto* power relations clash with lingering notions of national sovereignty, which still define official international relations. Unlike in the USSR where, given the practical nonexistence of any public sphere, there are hardly any problems of accountability, this state of affairs creates special problems for the US, which is burdened with the unenviable task of having to formulate and pursue foreign policy in terms of the new logic of *relations between superpowers*, while simultaneously justifying and accounting for it in terms of an increasingly irrelevant and obsolete notion of *national sovereignty*. Worse still, to the extent that responsibility for American foreign policy is not clearly spelled out anywhere, this political schizophrenia is not limited to its mode of public presentation and justification but infects its very formulation — it is hopelessly torn by conflicts between Congress and the Administration, the State Department and the Department of Defense, the Secretary of State and the National Security Council. This helps explain Vietnam, Irangate, Central American policy and scores of similar US foreign policy fiascos.

What this amounts to is none other than the thorny issue of sovereignty in a context in which the constitutional doctrine of the *separation of powers* tends to dissipate decisionmaking authority. What this means for the American left is that it constantly finds itself in the quixotic position of fighting political windmills whenever it criticizes the US government for the unavoidable discrepancies between professed ideals and actual practice. To the extent that the ideals have to be articulated in terms of a rather different *Realpolitik* haphazardly determining policy, the critique is often misdirected. Worse yet, the discrepancy cannot be overcome as long as the nature of the international order remains chaotic. Consequently, the notion of imperialism in general and

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*American* imperialism in particular can no longer be understood in traditional terms of apolitical economic domination. Even Schmitt's own modification of the concept of "economic imperialism" with the "tyranny of values" is itself obsolete. The tyranny is gone. Today the mechanism of imperialism is mediated throughout by a culture industry which guarantees socio-economic hegemony by rendering the rest of the world subliminally dependent on what advanced industrial societies can profitably produce and distribute. No longer in need of being imposed from above, because it is now demanded from below, cultural imperialism now enjoys a legitimacy undreamt by earlier forms of imperialism.

As Söllner shows, the Schmittian heritage was introduced to the US by Hans J. Morgenthau and Henry Kissinger, whose *Realpolitik* rotates around the concept of the *national interest*. Combined with superpower politics, it immediately deteriorates into a defense, pure and simple, of American imperialism understood in the traditional sense. In opposition to this, it is useless to seek recourse to the ideals of national sovereignty or economic independence. Both have long since ceased to make much sense in the post-Yalta world order — in the context of modern international commerce. In most instances these traditional leftist axioms turn out to be counterproductive: national autonomy has all too often become an excuse for preventing close scrutiny of repressive internal policies, while economic independence ends up excluding precisely those investments without which any economic development is practically impossible. At any rate, given the irreversible primacy of superpower politics and the impossibility of identifying any universal emancipatory potential in "real existing socialism," the US left finds itself in a peculiar political bind. The socio-economic structure of the international situation turns out to be such that, at best all the left can do is defend a vague notion of fairness in international economic transactions, together with the extension of both formal and substantial pseudo-universalist values to countries yet to become fully modernized.

The situation is not much better with domestic policy, where a similar stalemate generates peculiar political pathologies. Clearly, sovereignty in the US is not dependent on what Schmitt calls a "state of exception" — a notion inextricably rooted in the permanent crisis of the Weimar Republic — since the US government's extraordinary stability precludes any crisis from deteriorating to that stage. Yet an "Americanized" form of a "state of exception" could be seen as being periodically needed, not so much to reestablish a sovereignty (which is

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rarely problematic), but to generate sufficient popular support for the Administration, thus paralyzing Congress and allowing implementation of otherwise controversial policies. The political manipulation of crises as a dubious steering mechanism to resolve the impasses intrinsic in the American equivalent of Schmitt's *Crisis of Parliamentary Democracy* is an area the left has ignored for too long. Caught in a moralism required to generate the outrage necessary to sustain an otherwise unpopular opposition, the left finds it hard to digest a *Realpolitik* standpoint which smacks too much of cynicism. As a result, the left itself becomes part of that dimension susceptible to manipulation. The unpalatable antinomy here is between a politically impotent awareness of the logic of crisis management and a morally self-rightous intervention which, more often than not, generates counter-productive results.

A leftist *Realpolitik* must be critical of both liberalism and conservatism. But while the leftist critique of liberalism has always been willing to learn from and even appropriate some liberal ideas and policies, the leftist critique of conservatism has always been total. If the left dares to learn from and even appropriate anything from the conservative side, in this particular context it is necessary to ask what kind of conservative and thinker was Schmitt. That his theoretical outlook was not Nazi, in spite of his collaboration with the regime between 1933 and 1936, is well documented in the Nuremberg *dossier* (published here in full for the first time in any language) and convincingly argued in Bendersky's introduction. Both Hirst and Bendersky show that Schmitt — despite his Nazi interlude — was not a conservative like Sorel, Maurras, or even Moeller van der Bruck, but one much closer to Burke. He did recognize the irrational dimension in man, as well as its political implications, but considered it a danger rather than a foundation for political philosophy. The anti-Semitic statements injected into his writings during his Nazi phase always remained extraneous to his theories. This is why his opportunistic anti-Semitism was readily exposed as a sham by the SS. If Schmitt's relation to Nazism and anti-Semitism appears to have been less a question of his thought than his character, Gottfried is right in pointing out that the errors of a great thinker can and do have greater consequences than those of a lesser order. But character is not sufficient to explain the political actions of the "Hobbes of the 20th century." For Gottfried, it was a matter of Schmitt protecting his own skin; for Hirst, of his seeing no other alternative to chaos than Hitler. Whatever the reason, Hirst is right in asserting that the "personal political judgments" of a thinker (Schmitt or any other) should not be the basis, or at least the only or even primary basis for

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evaluating his political thought.

It is almost natural, from the comfortable vantage of the placid 1980's, to readily dismiss not only Schmitt and other right-wing German intellectuals who chose to collaborate with the Nazis, but also left-wingers like Lukács and Bloch who, for somewhat parallel reasons, chose to stand behind Stalin and his abhorrent crimes. For that generation, whose enthusiasm was irreversibly dampened, first by the "Great War," then by the outcome of the ensuing revolutionary uprisings, the psychological need to locate a fixed reference-point within the general chaos was so great that no price seemed too high to pay. The cultural context also was not very conducive to upholding a clear sense of traditional morality. As can be gathered from Heidegger's letter soliciting Schmitt's collaboration (included in this issue), even well-known intellectuals could be swayed by the Nazi tide into what Heidegger himself euphemistically referred to as "the gathering of the spiritual forces" to cleanse the universities of racially impure and otherwise problematic elements.

Suprisingly enough, while unwilling to even look at Schmitt's work, the American left has uncritically embraced Heidegger as a philosophical prop for the narcotics of post-modernism. The rejection of Western metaphysics in general, and of what critical theorists later called "instrumental rationality" in particular, fits all too well with the need to dismiss any "objective" standards able to expose the vacuity and fraudulent nature of the various fashionable academic "discourses." Feudalized within rapidly multiplying subdisciplines, "reason" and "truth" lose any normative import and degenerate to the level of self-referential tautological deductions. This "playful" nihilism of the academic New Class, however, feeds into the career needs of otherwise mediocre functionaries pretending to contribute to a knowledge industry that has lost any sense of direction. Here is where, ironically enough, Schmitt's cold realism can be a healthy corrective to the Heideggerian inebriation. A Schmittian analysis of academic *Realpolitik* readily cuts through all the post-modernist fog to the cultural bottom line: an academic left whose political impotence forces it to stress its "academic" modifier as it phases out the increasingly meaningless noun it started out qualifying.

Nevertheless, one reads Schmitt with ambivalence — an ambivalence fully conveyed by Schuldt's poem "*nomos*," which is not only an acronym but an allegory compressing images into the saga of a guilt-stained intellect. The mutation of language serves as a mirror of Schmitt's fall — not from grace but from moral rectitude. However,

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behind Schmitt's outlook there is an inescapable reality that cannot be ignored. Schuldt begins: "No ordinary muscle," i.e., man, "opens superstition's nest." Indeed: "No other mind offers such nemesis." Schuldt sees Schmitt as much a conjurer as a thinker — one whose ideas are as seductive as they are relevant. In the final analysis, the poet must retreat to his own devices — must end on a non-Schmittian note in the face of the leviathan: "Nomos governs my powerless cause." The poet — himself the exception — must shrink from that context in which he has no power because he is ill-at-ease even with the norm. Schmitt himself expresses something similar in his own poem, written in captivity after the war, where he traces his tribulations during the previous three turbulent decades. Guilt, self-pity and moral hubris are all inextricably part of the plot, as Schuldt shows in his comments on Schmitt's poem. Clearly, Schmitt cannot erase the Nazi stain in his past, and neither can the reader overlook it. Given this predicament, the best that can be hoped for is that Schmitt's ideas will be critically evaluated in terms of their content in spite of their associations.

How difficult this is to do can be seen even in the most serious efforts to deal with Schmitt. In his otherwise provocative evaluation of Schmitt's aesthetics, Pan tends to blur too many distinctions between England and continental Europe, 20th century totalitarianism and 16th century authoritarianism, and ends up reading Schmitt's efforts to understand art within a socio-political context as an argument for state control of the arts. For Schmitt, the source of the tragic is life itself, rather than artistic imagination. While his conservatism leads him to privilege "eternal" human predicaments, his political interests force him to focus on the concrete struggles ultimately related to political theology. Thus his rejection of autonomy aesthetics in the 16th century can only tendentiously be compared with Adorno's defense of it in the mid-20th century. Contrary to what one would expect, however, Schmitt's critique may well provide a challenging point of departure for a cultural critique in the West and a critical culture in the East.

The same cannot be said of Schmitt's concept of "political theology" — something historically ignored by the left. But Schmitt's "political theology" is not so much about theology as secularization, which is precisely the focus of Hans Blumenberg's critique of Schmitt. Blumenberg contraposes his idea of "progress" to Schmitt's critique of the universalism or pseudo-universalism brought about by the secularization of theology. In his article, Faber opposes both the presumed "monotheistic" political theology of Schmitt and the "polytheistic" political theology of Blumenberg — the authoritarian

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implications of the former and the liberal-pluralist implications of the latter. He recycles Benjamin in the hope of developing an emancipatory perspective beyond these alternatives. But a new perspective must go beyond both left and right critiques, and worn out Marxist pronouncements from Benjamin and Marcuse will no longer suffice. In criticizing the "myths" of both Schmitt and Blumenberg, Faber ends up creating a new one by buying into the rhetoric of "total mobilization." A couple of decades ago it was fashionable to claim, with Faber, that whoever was not part of the solution was part of the problem. Today, more often than not the "solutions" are themselves the problems. To mobilize with Faber against bureaucracies may end up triggering the creation of new and more efficient bureaucracies to regulate anti-bureaucratic behavior. At any rate, life is too short to mobilize it away.

Most of Schmitt's *answers* are irrelevant to the left, owing to their conservative character. But the *questions* he raises, as well as his critical analyses in general, have been ignored for too long. As Gottfried and Nicoletti show in their respective accounts of the recent reception of Schmitt's thought in Europe, Schmitt's ideas are becoming increasingly relevant in many countries. There is much that remains unexplored. Schmitt's rigor, conditioned no doubt by his training in jurisprudence, compounded with his no-nonsense approach to concrete power relations, can provide a healthy corrective to the predominant leftist moralism, which more often than not clouds judgment to the point of precluding effective political analysis. Given the alternative of an emotionally satisfying but politically doomed position and a precise but, alas, potentially paralyzing *Realpolitik*, there is not much of a choice — especially for intellectuals presumably committed to truth and clear-headedness. Be that as it may, in the present situation of political stalemate, the left can only benefit by learning from Carl Schmitt.

**Paul Piccone and G.L. Ulmen**

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# *Carl Schmitt's Decisionism*

## Paul Hirst

Since 1945 Western nations have witnessed a dramatic reduction in the variety of positions in political theory and jurisprudence. Political argument has been virtually reduced to contests within liberal-democratic theory. Even radicals now take representative democracy as their unquestioned point of departure. There are, of course, some benefits following from this restriction of political debate. Fascist, Nazi and Stalinist political ideologies are now beyond the pale. But the hegemony of liberal-democratic political argument tends to obscure the fact that we are thinking in terms which were already obsolete at the end of the 19th century.

Nazism and Stalinism frightened Western politicians into a strict adherence to liberal democracy. Political discussion remains excessively rigid, even though the liberal-democratic view of politics is grossly at odds with our political condition. Conservative theorists like Hayek try to recreate idealized political conditions of the mid-19th century. In so doing, they lend themselves to some of the most unsavory interests of the late 20th century — those determined to exploit the present undemocratic political condition. Social-Democratic theorists also avoid the central question of how to ensure public accountability of big government. Many radicals see liberal democracy as a means to reform, rather than as what needs to be reformed. They attempt to extend governmental action, without devising new means of controlling governmental agencies. New Right thinkers have reinforced the situation by pitting classical liberalism against democracy, individual rights against an interventionist state. There are no challenges to representative democracy, but only attempts to restrict its functions. The democratic state continues to be seen as a sovereign public power able to assure public peace.

The terms of debate have not always been so restricted. In the first three decades of this century liberal-democratic political theory and the notion of popular sovereignty through representative government were



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widely challenged by many groups. Much of this challenge, of course, was demagogic rhetoric presented on behalf of absurd doctrines of social reorganization. The anti-liberal criticism of Sorel, Maurras or Mussolini may be occasionally intriguing, but their alternatives are poisonous and, fortunately, no longer have a place in contemporary political discussion. The same can be said of much of the ultra-leftist and communist political theory of this period.

Other arguments are dismissed only at a cost. The one I will consider here — Carl Schmitt's "decisionism" — challenges the liberal-democratic theory of sovereignty in a way that throws considerable light on contemporary political conditions. His political theory before the Nazi seizure of power shared some assumptions with fascist political doctrine and he did attempt to become the "crown jurist" of the new Nazi state. Nevertheless, Schmitt's work asks hard questions and points to aspects of political life too uncomfortable to ignore. Because his thinking about concrete political situations is not governed by any dogmatic political alternative, it exhibits a peculiar objectivity.

Schmitt's situational judgment stems from his view of politics, or more correctly from his view of the political as "friend-enemy" relations, which explains how he could change suddenly from contempt for Hitler to endorsing Nazism. If it is nihilistic to lack substantial ethical standards beyond politics, then Schmitt is a nihilist. In this, however, he is in the company of many modern political thinkers. What led him to collaborate with the Nazis from March 1933 to December1936 was not, however, ethical nihilism, but above all concern with order. Along with many German conservatives, Schmitt saw the choice as either Hitler or chaos. As it turned out, he saved his life but lost his reputation. He lived in disrepute in the later years of the Third Reich and died in ignominy in the Federal Republic. But political thought should not be evaluated on the basis of authors' personal political judgments. Thus the value of Schmitt's work is not diminished by the choices he made.

Schmitt's main targets are the liberal-constitutional theory of the state and the parliamentarist conception of politics. In the former, the state is subordinated to law; it becomes the executor of purposes determined by a representative legislative assembly. In the latter, politics is dominated by "discussion," by the free deliberation of representatives in the assembly. Schmitt considers 19th century liberal democracy antipolitical and rendered impotent by a rule-bound legalism, a rationalistic concept of political debate, and the desire that individual citizens enjoy a legally-guaranteed "private" sphere protected from the state. The political is none of these things. Its essence is struggle.

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In *The Concept of the Political* Schmitt argues that the *differentia specifica* of the political, which separates it from other spheres of life such as religion or economics, is friend-enemy relations. The political comes into being when groups are placed in a relation of enmity, where each comes to perceive the other as an irreconcilable adversary to be fought and, if possible, defeated. Such relations exhibit an existential logic which overrides the motives which may have brought groups to this point. Each group now faces an opponent and must take account of that fact: "Every religious, moral, economic, ethical, or other antithesis transforms itself into a political one if it is sufficiently strong to group human beings effectively according to friend and enemy."[1] The political consists not in war or armed conflict as such, but precisely in the relation of enmity: not competition but confrontation. It is bound by no law: it is prior to law.

For Schmitt: "The concept of the state presupposes the concept of the political."[2] States arise as a means of continuing, organizing and channeling political struggle. It is political struggle which gives rise to political order. Any entity involved in friend-enemy relations is by definition political, whatever its origin or the origin of the differences leading to enmity: "A religious community which wages wars against members of other religious communities or engages in other wars is already more than a religious community; it is a political entity."[3] The political condition arises from the struggle of groups; internal order is imposed to pursue external conflict. To view the state as the settled and orderly administration of a territory, concerned with the organization of its affairs according to law, is to see only the stabilized results of conflict. It is also to ignore the fact that the state stands in a relation of enmity to other states, that it holds its territory by means of armed force and that, on this basis of a monopoly of force, it can make claims to be the lawful government of that territory. The peaceful, legalistic, liberal bourgeoisie is sitting on a volcano and ignoring the facts. Their world depends on a relative stabilization of conflicts within the state and on the state's ability to keep at bay other potentially hostile states.

For Hobbes, the political state arises from a contract to submit to a sovereign who will put an end to the war of all against all which must otherwise prevail in a state of nature — an exchange of obedience for

1. Carl Schmitt, *The Concept of the Political*, Translation and Introduction by George Schwab, (New Brunswick: Rutgers University Press, 1976), p. 37.
2. *Ibid.*, p. 19.
3. *Ibid.*, p. 37.

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protection. Schmitt starts where Hobbes leaves off —with the natural condition between organized and competing groups or states. No amount of discussion, compromise or exhortation can settle issues between enemies. There can be no genuine agreement because in the end there is nothing to agree about. Dominated as it is by the friend or enemy alternative, the political requires not discussion but decision. No amount of reflection can change an issue which is so existentially primitive that it precludes it. Speeches and motions in assemblies should not be contraposed to blood and iron but with the moral force of the decision, because vacillating parliamentarians can also cause considerable bloodshed.

In Schmitt's view, parliamentarism and liberalism existed in a particular historical epoch between the "absolute" state of the 17th century and the "total state" of the 20th century. Parliamentary discussion and a liberal "private sphere" presupposed the depoliticization of a large area of social, economic, and cultural life. The state provided a legally-codified order within which social customs, economic competition, religious beliefs, etc. could be pursued without becoming "political." "Politics" as such ceases to be exclusively a matter of the state when "state and society penetrate each other."[4] The modern "total state" breaks down the depoliticization on which such a narrow view of politics could rest: "Heretofore ostensibly neutral domains — religion, culture, education, the economy — then cease to be neutral . . . . Against such neutralizations and depoliticizations of important domains appears the total state, which potentially embraces every domain. This results in the identity of state and society. In such a state . . . everything is at least potentially political, and in referring to the state it is no longer possible to assert for it a specifically political characteristic."[5]

Democracy and liberalism are fundamentally antagonistic. Democracy does away with the depoliticizations characteristic of rule by a narrow bourgeois stratum insulated from popular demands. Mass politics means a broadening of the agenda to include the affairs of all society — everything is potentially political. Mass politics also threatens existing forms of legal order. The politicization of all domains increases pressure on the state by multiplying the competing interests demanding action; at the same time, the function of the liberal legal framework — the regulating of the "private sphere" — becomes inadequate. Once all social affairs become political the existing constitutional framework

4. *Ibid.*, p. 22.
5. *Ibid.*

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threatens the social order: politics becomes a contest of organized parties seeking to prevail rather than to achieve reconciliation. The result is a state bound by law to allow every party an "equal chance" for power: a weak state threatened with dissolution.

Schmitt may be an authoritarian conservative. But his diagnosis of the defects of parliamentarism and liberalism is an objective analysis rather than a mere restatement of value preferences. His concept of "sovereignty" is challenging because it forces us to think very carefully about the conjuring trick which is "law." Liberalism tries to make the state subject to law. Laws are lawful if properly enacted according to set procedures, hence the "rule of law." In much liberal-democratic constitutional doctrine the legislature is held to be "sovereign": it derives its law-making power from the will of the people expressed through their representatives. Liberalism relies on a constituting political moment in order that the "sovereignty" implied in democratic legislatures be unable to modify at will not only specific laws but also law-making processes. It is therefore threatened by a condition of politics which converts the "rule of law" into a merely formal doctrine. If the "rule of law" is simply the people's will expressed through their representatives, then it has no determinate content and the state is no longer substantively bound by law in its actions.

Classical liberalism implies a highly conservative version of the rule of law and a sovereignty limited by a constitutive political act beyond the reach of normal politics. Democracy threatens the parliamentary-constitutional regime with a boundless sovereign power claimed in the name of the "people." This reveals that all legal orders have an "outside;" they rest on a political condition which is prior to and not bound by law. A constitution can only survive if the constituting political act is upheld by some political power. The "people" exist only in the claims of that tiny minority (their "representatives") which functions as a "majority" in the legislative assembly. "Sovereignty" is thus not a matter of formal constitutional doctrine or essentially hypocritical references to the "people"; it is a matter of determining which particular agency has the capacity — outside of law — to impose an order which, because it is political, can become legal.

Schmitt's analysis cuts through three-hundred years of political theory and public law doctrine to define sovereignty in a way that renders irrelevant the endless debates about principles of political obligation or the formal constitutional powers of different bodies: "From a practical or theoretical perspective, it really does not matter whether an abstract scheme advanced to define sovereignty (namely, that sovereignty

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is the highest power, not a derived power) is acceptable. About an abstract concept there will be no argument . . . What is argued about is the concrete application, and that means who decides in a situation of conflict what constitutes the public interest or interest of the state, public safety and order, *le salut public*, and so on. The exception, which is not codified in the existing legal order, can at best be characterised as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a preformed law."[6] Brutally put: "Sovereign is he who decides on the exception."[7] The sovereign is a definite agency capable of making a decision, not a legitimating category (the "people") or a purely formal definition (plenitude of power, etc.). Sovereignty is *outside* the law, since the actions of the sovereign in the state of exception cannot be bound by laws. To claim that this is anti-legal is to ignore the fact that all laws have an outside, that they exist because of a substantiated claim on the part of some agency to be the dominant source of binding rules within a territory. The sovereign determines the possibility of the "rule of law" by deciding on the exception: "For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists."[8]

Schmitt's concept of the exception is neither nihilistic nor anarchistic; it is concerned with the preservation of the state and the defense of legitimately-constituted government and the stable institutions of society. He argues that "the exception is different from anarchy and chaos."[9] It is an attempt to restore order in a political sense. While the state of exception can know no norms, the actions of the sovereign within the state must be governed by what is prudent to restore order. Barbaric excess and pure arbitrary power are not Schmitt's object. Power is limited by a prudent concern for the social order; in the exception "order in the juristic sense still prevails, even if it is not of the ordinary kind."[10] Schmitt may be a relativist with regard to ultimate values in politics. But he is certainly a conservative concerned with defending a political framework in which the "concrete orders" of society can be preserved, which distinguishes his thinking from both fascism and Nazism in their subordination of all social institutions to such idealized

6. Carl Schmitt, *Political Theology*, Translation and Introduction by George Schwab, (MIT Press: Cambridge, 1985), p. 6.
7. *Ibid.*, p. 5.
8. *Ibid.*, p. 13.
9. *Ibid.*, p. 12.
10. *Ibid.*

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entities as the Leader and the People. For Schmitt, the exception is never the rule, as it is with fascism and Nazism. If he persists in demonstrating how law depends on politics, the norm on the exception, stability on struggle, he points up the contrary illusions of fascism and Nazism. In fact, Schmitt's work can be used as a critique of both. The ruthless logic in his analysis of the political, the nature of sovereignty, and the exception demonstrates the irrationality of fascism and Nazism. The exception cannot be made the rule in the "total state" without reducing society to such a disorder through the political actions of the mass party that the very survival of the state is threatened. The Nazi state sought war as the highest goal in politics, but conducted its affairs in such a chaotic way that its war-making capacity was undermined and its war aims became fatally over-extended. Schmitt's friend-enemy thesis is concerned with avoiding the danger that the logic of the political will reach its conclusion in unlimited war.

Schmitt modernizes the absolutist doctrines of Bodin and Hobbes. His jurisprudence restores — in the exception rather than the norm — the sovereign as uncommanded commander. For Hobbes, laws are orders given by those with authority — *autoritas non veritas facit legem*. Confronted with complex systems of procedural limitation in public law and with the formalization of law into a system, laws became far more complex than orders. Modern legal positivism could point to a normal liberal-parliamentary legal order which did and still does appear to contradict Hobbes. Even in the somewhat modernized form of John Austin, the Hobbesian view of sovereignty is rejected on all sides. Schmitt shared neither the simplistic view of Hobbes this implies, nor the indifference of modern legal positivism to the political foundation of law. He founded his jurisprudence neither on the normal workings of the legal order nor on the formal niceties of constitutional doctrine, but on a condition quite alien to them. "Normalcy" rests not on legal or constitutional conditions but on a certain balance of political forces, a certain capacity of the state to impose order by force should the need arise. This is especially true of liberal-parliamentary regimes, whose public law requires stabilization of political conflicts and considerable police and war powers even to begin to have the slightest chance of functioning at all. Law cannot itself form a completely rational and lawful system; the analysis of the state must make reference to those agencies which have the capacity to decide on the state of exception and not merely a formal plenitude of power.

In *Political Theology* Schmitt claims that the concepts of the modern theory of the state are secularized theological concepts. This is obvious

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in the case of the concept of sovereignty, wherein the omnipotent lawgiver is a mundane version of an all-powerful God. He argues that liberalism and parliamentarism correspond to deist views of God's action through constant and general natural laws. His own view is a form of fundamentalism in which the exception plays the same role in relation to the state as the miracles of Jesus do in confirming the gospel. The exception reveals the legally-unlimited capacity of whoever is sovereign within the state. In conventional, liberal-democratic doctrine the people are sovereign; their will is expressed through representatives. Schmitt argues that modern democracy is a form of populism in that the people are mobilized by propaganda and organized interests. Such a democracy bases legitimacy on the people's will. Thus parliament exists on the sufferance of political parties, propaganda agencies and organized interests which compete for popular "consent." When parliamentary forms and the rule of "law" become inadequate to the political situation, they will be dispensed with in the name of the people: "No other constitutional institution can withstand the sole criterion of the people's will, however it is expressed."[11]

Schmitt thus accepts the logic of Weber's view of plebiscitarian democracy and the rise of bureaucratic mass parties, which utterly destroy the autonomy of the old parliamentary notables. He uses the 19th century conservative Juan Donoso Cortés to set the essential dilemma in *Political Theology*: either a boundless democracy of plebiscitarian populism, which will carry us wherever it will (i.e., to Marxist or fascist domination) or a dictatorship. Schmitt advocates a very specific form of dictatorship in a state of exception — a "commissarial" dictatorship, which acts to restore social stability, to preserve the concrete orders of society and to restore the constitution. The dictator has a constitutional office. He acts in the name of the constitution, but takes such measures as are necessary to preserve order. These measures are not bound by law; they are extra-legal.

Schmitt's doctrine thus involves a paradox. For all its stress on friend-enemy relations, on decisive political action, its core, its aim is the maintenance of stability and order. It is founded on a political non-law, but not in the interest of lawlessness. Schmitt insists that the constitution must be capable of meeting the challenge of the exception and of allowing those measures necessary to preserve order. He is anti-liberal because he claims liberalism cannot cope with the reality of the political; it can only insist on a legal formalism which is useless in the

11. *Ibid.*, p. 15.

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exceptional case. He argues that only those parties which are bound to uphold the constitution should be allowed an "equal chance" to struggle for power. Parties which threaten the existing order and use constitutional means to challenge the constitution should be subject to rigorous control.

Schmitt's relentless attack on "discussion" makes most democrats and radicals extremely hostile to his views. He is a determined critic of the Enlightenment. Habermas' "ideal speech situation" in which we communicate without distortion to discover a common "emancipatory interest" would appear to Schmitt as a trivial philosophical restatement of Guizot's view that in representative government "through discussion the powers-that-be are obliged to seek truth in common."[12] Schmitt is probably right. Enemies have nothing to discuss and we can never attain a situation in which the friend-enemy distinction is abolished. Liberalism does tend to ignore the exception and the more resolute forms of political struggle. But Schmitt's reasoning is left with the exception and nothing else. In a "total state," with a relatively-established balance of political forces, his doctrine has nothing much to teach us. There is something of a contradiction between his concept of the political and his concept of the "total state": by making everything political, the "total state" infects the sphere of politics with the complex necessities of economic management and social organization. Schmitt can only see the "total state" as a destruction of liberalism, the end of the division between the state and civil society. But such a state reduces the scope of the either/or by vastly broadening the agenda of public business. The state is no longer the "sovereign" body of political struggle, but increasingly a vast complex of ill-coordinated public service agencies.

In such a complex, public-service state, regulation and arbitration become essential, as does the need for a jurisprudence which takes into account the character of a state concerned primarily with practical problems of social organization. These problems are difficult to treat as matters of "exacting moral decision," although that is what the contemporary New Right tries to do. They are matters of investigation, balancing advantages, paying regard to outcomes — matters which require "discussion." Such discussion will never be a seeking for truth in common; it is an approach to solving problems which can seldom have a "truth." It is a mixture of analysis and evaluation concerned with the existing state of affairs.

12. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. and "Introduction" by Ellen Kennedy, (Cambridge: MIT Press, 1985), p. 97, n. 5.

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In reality, Schmitt's view of "discussion" presupposes a high-bourgeois polity of a type which has never existed. It treats parliament as a kind of collective-reasoning agency. His acceptance at face value of the liberal-democratic rationale for parliament, however, is neither naive nor just polemical. He insists that institutions require a principle or rationale which commands support, that they cannot thrive or survive with only the claim that there is no alternative. The question "what else?" is hardly a rallying call. Schmitt had as much contempt for the Weimar Republic's assembly as Weber did for the pre-1914 Reichstag. Both Schmitt and Weber judged parliamentarianism in terms of liberal-democratic rhetoric and both found the practice wanting. Schmitt also found the rationale wanting. Weber wanted to marry parliamentarism and effective plebiscitary democracy to make the chamber an effective training-ground for leaders. Such a function presupposes a chamber in which debate and genuine autonomy for its members still have a place.

In terms of modern political theory parliament has ceased to play a crucial role. Schmitt and Weber could both be taken to task for seeing in the behavior and nature of parties the failure of parliament because parliaments only function as a certain focus of the party system and can never work better than the system itself. Effective parliaments presuppose parties which can compromise because they operate within a consensus, which are strong enough to marginalize non-consensus parties. Schmitt rightly recognized that such a party-system did not then exist in Germany. Where such a system does exist, parliaments can be one effective instrument among others in party governments, political management, and a limited forum for trading between the consensus parties. Such parliaments function very differently from Schmitt's view of parliamentarism. But they also function very differently from representative government in classic liberal-democratic theory.

In the Weimar Republic the state of exception was close to being the norm. Thus the constitutional status and political function of the exceptional powers of the president were a serious matter of political debate. Schmitt used these practical debates to make general and challenging points about the nature of sovereignty and law. In most of the post-1945 Western democracies the state of exception in the form Schmitt knew it has become a marginal political problem. Political stability has permitted complacency in political theory and, indeed, has required it as one of its conditions. But stably-functioning party systems exist for reasons that have little to do with constitutional doctrine, and no amount of formally-liberal measures can compensate for

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the decline of such a doctrine. Despite growing strains and a less consensual political climate than obtained in the 1950s, nowhere in the West have parties reached the stage of antagonistic competition typical of the Weimar period. Parliamentary democracy has ceased to function as classic liberal-democratic theory supposes it to do. No one expects it to provide the forum for "discussion" which Schmitt derided. But parliamentary institutions have ceased also to oversee effectively the workings of modern big government. The "total state" may have marginalized Schmitt's politics of the "morally exacting" decision. But it has also marginalized existing methods of democratic control. Parliament has become a tool of party government, even more so of government in general; it has come to serve as a means of giving legitimacy and legality to the actions of the ramified mass of state agencies.

Neither liberal-democratic theories nor pluralist views of polyarchical competition in a stable party system can provide an account of the organizational forms necessary for more effective democratic accountability. Schmitt cannot do so either. But his views on the nature of sovereignty are helpful for recognizing certain contemporary problems of democratic control. Because Schmitt is no democrat, he recognizes and insists on things democrats often wish to forget. The modern state may restrict the scope for Schmitt's politics of either/or, imposing a mass of functions in which such "political" thinking would be reactionary and counter-productive. But the state remains, nevertheless, a political association in Schmitt's sense. Governmental agencies concerned by and large with matters of social and economic organization operate through managerial imperatives and are subject to at least some minimal legal regulation and political control. But they do not exhaust the state. Schmitt is valuable because he stresses that all legal orders have an "outside" and that definite agencies within the state have the option (if not the formal constitutional right) to act extra-legally. The consequences of contemporary states acting in this way are far greater than in Schmitt's day, the Nazis notwithstanding, because organizational capacity and military power are so much greater.

The entire apparatus of nuclear security has escaped democratic political control in that the technology involved so radically telescopes the time involved in operational decision-making and so restricts it to a small circle of persons that it does become a simple matter of the "morally exacting" decision. In that sense we do have a very clear "sovereign" and a perpetual prospect of the state of exception. Friend-enemy relations have not disappeared, even if the consequences of the superpowers pursuing them to the full are self-defeating. The effect of

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this condition on the rest of the polity is considerable. The nuclear-security apparatus reserves to itself considerable powers of control over economic resources, special police measures, etc., and has a capacity for secret policy-making whose limits are difficult to determine. If we take Schmitt's claim that "sovereign is he who decides on the exception" seriously, then most of our formal constitutional doctrines are junk.

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# *Carl Schmitt and the Conservative Revolution*

Joseph W. Bendersky

Carl Schmitt has been depicted long and inaccurately as one of Weimar's foremost conservative revolutionaries. In the early literature he was not merely categorized as a thinker belonging to that "motley" group of writers associated with the conservative revolution; he was identified directly with neo-romanticism, irrationalism, *völkisch* thinking, and the call for a vague "national revolution." He was associated with Oswald Spengler, Moeller van den Bruck, and Ernst Jünger. Even George Mosse described Schmitt as a leading "spokesman for the general consensus of 'German revolutionaries', " whose movement was founded upon *völkisch* ideology. Mosse went so far as to assert that Schmitt viewed the *Volk* in racial terms, that he was nothing less than an advocate of the theory of the "Aryan race" as the "common denominator."[1]

Over the next twenty years the only significant revision was that most writers ceased identifying Schmitt with the "Aryan race" theory. Authors of general histories of modern Germany like Gordon Craig continued to claim that Schmitt "admired and shared the views of Moeller van den Bruck and Ernst Jünger," while specialists on German conservatism such as Hans-Jürgen Puhle portrayed him as one of the "most influential spokesmen" for the "*völkisch* national consensus."[2] According to Puhle, conservative revolutionary ideas were "fired by a combination of Spenglerian pessimism, Nietzschean nihilism, and vitalistic actionism,"[3] and Schmitt was a romantic "whose approach to life and its problems was irrational." His "kind of thinking," Craig

1. George L. Mosse, *The Crisis of German Ideology: Intellectual Origins of the Third Reich* (New York: Grosset & Dunlap, 1964), pp. 283, 285; and *Germans and Jews: The Right, the Left, and the Search for a "Third Force" in Pre-Nazi Germany* (New York: Howard Fertig, 1970), pp. 116, 117, 128.

2. Gordon A. Craig, *Germany, 1866-1945* (New York: Oxford University Press, 1980), pp. 208-209. Hans Jürgen Puhle, "Conservatism in Modern German History," *Journal of Contemporary History*, Vol. 13, No. 4 (October 1978), p. 709. See also Karl Dietrich Bracher, *The German Dictatorship: The Origins, Structure, and Effects of National Socialism* (New York: Praeger, 1970), pp. 142-144.

3. Puhle, "Conservatism," *op. cit.*, p. 709.



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insisted, "was a mixture of mysticism and brutality."[4] Even the most recent study on the subject by Jeffrey Herf has Schmitt belonging to an intellectual movement that "envisaged a new Reich of enormous strength and unity, rejected the view that political action should be guided by rational criteria, and idealized violence for its own sake. They [i.e., Schmitt and other conservative revolutionaries] denounced what they believed were the boredom and complacency of bourgeois life and searched for renewal in an energizing 'barbarism'."[5] Herf claims that "a masculine cult of action and will permeates Schmitt's protest against the rationalization of political conflict . . . [he] divorced all political decisions from any normative foundation other than that of affirmation of the self."[6] Similarly, Martin Greiffenhagen writes: "Decision was praised regardless of goal. The same held true of sacrifice, which in itself was said to be important, no matter who or what for . . . Strong leadership was praised, no matter where the leader led."[7]

Once these and other authors proceed down this path of argumentation, they occasionally lose all restraint in their generalizations and/or speculations. If the combinations of ideas and figures appear to fit the model they impose on the material — even more tempting when this synthesis also adds a certain stylistic flair or attractiveness — the generalization is presented dogmatically as fact. The *evidence* to support a particular thesis is all too often *overlooked*. A useful example of this process of following the chain of one's own ideas beyond the evidence is Herf's claims concerning the "war experience." While it is indisputable that it played a prominent role among certain conservative revolutionary writers, especially the "national revolutionaries," and that Ernst Jünger is perhaps the most illustrative representative of this current, it does not necessarily follow that one can link Schmitt with Jünger in this regard. Herf argues, nonetheless, that "their [Jünger and Schmitt] enthusiasm for the *Fronterlebnis* (front experience) and their belief that the slaughter was bringing forth a new man was an old romantic vision in a modern context."[8] But Schmitt never served at the front, and one

4. Gordon A. Craig, "Decision, not Discussion," *Times Literary Supplement* (August 12, 1983). p. 851.

5. Jeffrey Herf, *Reactionary Modernism: Technology, Culture, and Politics in Weimar and the Third Reich* (New York: Cambridge University Press, 1984), p. 21.

6. *Ibid.*, p. 118.

7. Martin Greiffenhagen, "The Dilemma of Conservatism in Germany," *Journal of Contemporary History*, Vol. 14, No. 4 (October 1979), p. 616; and *Das Dilemma des Konservatismus in Deutschland* (Munich: R. Piper Verlag, 1971), especially pp. 194-195, 216, 248-253.

8. Herf, *Reactionary Modernism*, *op. cit.*, p. 15.

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will not find in Schmitt's writings any ideas, references, or resonances identifying him with the "war experience" either ideologically or psychologically. It is absurd, therefore, to pursue this line of argument still further by placing Schmitt in "a tradition with apocalyptic visions in which a total transformation of a degenerate *Zivilisation* would occur through sudden and violent change. The *Kulturnation* would emerge through a purifying process of death and transfiguration."[9]

Such descriptions surely leave the reader wondering why and how a figure with this alleged brutal, irrational preoccupation with action could ever become an internationally respected legal scholar. Generally, this kind of interpretation has hitherto been based on two sources, both secondary. The first is the books by Christian Graf von Krockow and Jürgen Fijalkowski. The second is monographs on the conservative revolution.[10]

### *The Postwar Mythology*

Krockow's work links Schmitt, Jünger, and Heidegger together as intellectual representatives of an existential crisis and analyzes them collectively as an expression of a modern predicament characterized by a loss of objectivity and the rise of relativism. In so doing, he attempts to connect this metaphysical-psychological crisis and the sociological predicament of the German bourgeoisie. He also relates these trends to the collapse of the Weimar Republic and the Nazi seizure of power: "The devaluation of objectivity implies an elimination of every rational argument in the political sphere and a transformation of the flaw of prejudice into the virtue of the 'existential decision'. The practical consequence of this transformation has been drawn out by fascism . . . ."[11]

Aside from its debatable thesis, Krockow's book suffers from other serious weaknesses. Full of conjecture, it distorts Schmitt's ideas either by taking certain selections out of context or by analyzing them in an historical vacuum (i.e., by ignoring the specific political or legal issues

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9. *Ibid.*

10. Christian Graf von Krockow, *Die Entscheidung: Eine Untersuchung über Ernst Jünger, Carl Schmitt, Martin Heidegger* (Stuttgart: Ferdinand Enke Verlag, 1958); and Jürgen Fijalkowski, *Die Wendung zum Führerstaat: Ideologische Komponenten in der politischen Philosophie Carl Schmitts* (Cologne: Westdeutscher Verlag, 1958). Cf. also Armin Mohler, *Die Konservative Revolution in Deutschland, 1918-1932: Ein Handbuch* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972); Klemens von Klemperer, *Germany's New Conservatism: Its History and Dilemma in the Twentieth Century* (Princeton: Princeton University Press, 1968); Kurt Sontheimer, *Antidemokratisches Denken in der Weimarer Republik: Die politischen Ideen des deutschen Nationalismus zwischen 1918 und 1933* (Munich: Nymphenburger Verlagshandlung, 1962).

11. Krockow, *Die Entscheidung*, *op. cit.*, pp. 58-59.

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with which Schmitt was grappling). Complex questions, often directly related to pressing Weimar problems, are dealt with at a metaphysical level and then only as they pertain to Krockow's central idea of "decisionism." To make a point, he jumps from a discussion of Schmitt's early Weimar ideas on political romanticism and decisionism to the concept of "concrete order thinking" Schmitt later introduced during the Nazi era, neglecting all personal, intellectual, and political developments in between.[12]

Krockow also displays a highly dubious characteristic found in many subsequent works on Schmitt — he has a tendency to conclude that Schmitt really means the opposite of what he says in his writings. Just as Karl Löwith earlier argued that Schmitt was really revealing himself when he defined "subjectivized occasionalism" in his critique of bourgeois subjectivity and political romanticism,[13] Krockow develops his own thesis about Schmitt as an exponent of subjective decisionism (i.e., romanticism) against rational political discussion and objectivity by arguing that Schmitt's *Political Romanticism* is psychologically "a projection of [Schmitt's] self-hatred." Schmitt is allegedly a representative of the German bourgeoisie because decisionism is supposedly "an expression of bourgeois self-hatred and despair."[14] In like manner, Herf continues to claim that Schmitt was an irrational thinker and political romantic;[15] and Craig has recently stated: "It is not easy, indeed, to reject Christian Graf von Krockow's view that the logic of [Schmitt's] thought always tended toward dictatorship . . . the existential will of someone wielding arbitrary power. . . [and this] leads one to suspect that Schmitt's repudiation of romanticism in 1919 was not as definitive as he seemed to think."[16]

Krockow nowhere offers a general or comprehensive evaluation of Schmitt's legal and political writings. He restricts his discussion primarily to *Political Romanticism, Political Theology,* and *The Concept of the Political*; several of Schmitt's most important works receive little or no attention. For example, works written between 1929 and 1932 are not analyzed at all, and nothing is said about Schmitt's political positions during the period of the presidential system. Moreover, Krockow fails to address the question of Schmitt during the most influential phase of conservative

12. *Ibid.*, pp. 91-106.
13. Hugo Fiala [Karl Löwith] "Politische Dezisionismus," *Internationale Zeitschrift für Theorie des Rechts*, Vol. 9, No. 2 (1935), pp. 101-123.
14. Krockow, *Die Entscheidung*, *op. cit.*, pp. 85, 91, 159.
15. Herf, *Reactionary Modernism*, *op. cit.*, pp. 78, 118.
16. Craig, "Decision," *op. cit.*, p. 851.

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revolutionary activity at the end of the Weimar Republic. This certainly raises serious questions regarding the frequent citation of Krockow to substantiate the thesis of Schmitt as a member of this movement.

Although Fijalkowski attempts a more comprehensive examination of Schmitt's works than Krockow, his methodology and conclusions are no less problematical. His interpretation rests on the assumption that Schmitt's writings do not constitute political theory, or even scholarly analyses and "rational criticism," but are "apologetic" and "uncritical" ideological polemics.[17] Disregarding the various phases in the development of Schmitt's thought, eschewing as well the different political systems and concrete situations Schmitt addressed, Fijalkowski treats Schmitt's entire *oeuvre* as a unit.

The alleged object of Fijalkowski's study is to discover the "ideological components" in Schmitt's political philosophy, which Fijalkowski presumes to be not only anti-democratic but aimed at intentionally undermining the Weimar Republic. To arrive at this conclusion, he attempts to demonstrate that Schmitt's works only appear to contain rational arguments and critiques, that "in reality, behind these [lines] were concealed an anti-parliamentary and anti-democratic option for the authoritarian order of a total *Führerstaat*."[18] Typical of Fijalkowski's approach is the presentation of a fairly accurate summary of essential aspects of Schmitt's ideas, followed by the conclusion that ". . . as logical as they appear to be, [these] are nonetheless already ideological arguments: They are aimed not at establishing the parliamentary-democratic constitutional state but rather specifically to show that this has become illegitimate and dysfunctional and therefore must be overcome."[19] Having thus turned Schmitt's position into its opposite, Fijalkowski pursues his argument to the point of surmising that Schmitt's hopes and expectations were fulfilled in the Nazi *Machtergreifung*: "The political system that the Nationalist Socialist movement promised to develop appeared to [Schmitt] as the most suitable form of political organization for the twentieth century."[20]

Conclusions of this kind and Fijalkowski's initial distortions are contradicted by Schmitt's actual political and intellectual relations to Weimar and the Third Reich. The books of both Krockow and Fijalkowski are generally and rightly regarded today as manifestations of the intellectual climate and historiography of West Germany in the

17. Fijalkowski, *Führerstaat*, *op. cit.*, pp. xxii-xxiii and *passim*.
18. *Ibid.*
19. *Ibid.*, p. 31.
20. *Ibid.*, p. 141.

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1950s.[21] Nevertheless, most historians who have written about Schmitt as a conservative revolutionary have had their outlook formed by these early studies, and have attempted to force the limited primary sources they examine into this preconceived framework. Perhaps the most blatant example of such an ahistorical approach can be found in Mosse. The only primary sources he cites to substantiate his interpretation of Schmitt as a Weimar *völkisch* conservative revolutionary are *The Crisis of Parliamentary Democracy* and *Staat, Bewegung, Volk*.[22] In the former, one will not find any passage where Schmitt argues, as Mosse contends, that the *Volk* is a "mystical entity"; *Staat, Bewegung, Volk* was not written during the Weimar Republic but during the Third Reich — it is not a reflection of either Schmitt's political or intellectual perspectives prior to Hitler's *Machtergreifung*. Its reference to *Volk* and race, inserted to accommodate the Nazis, stands in sharp contradiction to Schmitt's earlier political and legal writings in which racial thought had no place and made no sense.[23]

While Alfons Söllner clearly avoids this extreme form of misrepresentation, he has not been any more successful in substantiating the conservative revolutionary thesis. In an effort to show that "political decisionism represented a definite and very ambitious formulation of the program of a conservative revolution," Söllner briefly cites several of Schmitt's more important legal and political works.[24] With the exception of asserting that Schmitt was an advocate of an irrational political philosophy and of an authoritarian solution to the crisis after 1929, however, Söllner never explains, even in general terms, why Schmitt should be labeled a conservative revolutionary or how he represented this program. Moreover, the contention that Schmitt's response to Weimar's final crisis ". . . is not drawn from a study of social and political

21. See Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton: Princeton University Press, 1983); Volker Neumann, *Der Staat im Bürgerkrieg: Kontinuität und Wandlung des Staatsbegriffs in der Theorie Carl Schmitts* (Frankfurt a.M.: Campus Verlag, 1980); Helmut Rumpf, *Carl Schmitt und Thomas Hobbes: Ideele Beziehungen und aktuelle Bedeutung* (Berlin: Duncker & Humblot, 1972); George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970); Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (Berlin: Hermann Luchterhand Verlag, 1964).

22. Mosse, *German Ideology*, *op. cit.*, pp. 285, 353; and *Germans and Jews*, *op. cit.*, pp. 116-117, 128.

23. See Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Munich: Duncker & Humblot, 1926); and *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933). See also Bendersky, *Carl Schmitt*, *op. cit.*, pp. 59, 207-210, 227-228.

24. Alfons Söllner, "Leftist Students of the Conservative Revolution: Neumann, Kirchheimer and Marcuse," *Telos*, No. 61 (Fall 1984), p. 57.

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forces, but from a utopia of a popular *Gemeinschaft*"[25] indicates that Söllner's interpretation rests more on his own preconceived notions of Schmitt rather than on Schmitt's own writings or political involvements with the presidential system between 1930 and 1933. In light of Schmitt's emphasis on the "concrete situation," as well as his incisive analyses of the social, economic, and ideological factors behind the crises within the *Parteienstaat*, Söllner's conclusions are untenable.[26] In any event, nowhere do we receive a fully developed or documented explanation of how either Schmitt's writings or political activity related to the tenets and goals of the conservative revolution.

On his part, Herf limits his primary documentation essentially to *Political Romanticism* and *The Concept of the Political*. Unlike many other writers, he at least acknowledges that Schmitt wrote a hostile, devastating critique of political romanticism; but he is, nonetheless, determined to argue that Schmitt was a neo-romantic of a peculiar kind (i.e., one fitting Herf's model of a "reactionary modernist"). To do so he concentrates on a minor segment of *Political Romanticism*, reinforced by excerpts from *The Concept of the Political*, to show that Schmitt embraced the "romantic politician" while rejecting the "political romantic."[27] In one place Schmitt appears as an exponent of "political action and responsibility" against the passivity and "irresponsible subjectivism" of the romantics; in another, as one who has the "the self at the center of his concerns" and is a representative of "political irresponsibility."[28] Contrary to the interpretations of Schmitt as a *völkisch* philosopher, and also in direct contradiction to Söllner's idea of Schmitt as a utopian communitarian thinker, Herf cites the same works from which these conclusions are drawn to demonstrate that Schmitt rejected utopian, *völkisch* romanticism in favor of combining spirit with technology. Once again, however, in none of the beautifully-written pages of Herf's book, full of confusing mental gymnastics, is it actually established or made clear why Schmitt should be classified as a romantic or a conservative revolutionary. Presumably, repetition of such highly charged

25. *Ibid.*, p. 63. Although in his longer work on the Frankfurt School Söllner critically examines Schmitt in more detail, he fails here as well to establish that Schmitt was a conservative revolutionary. Indeed, Söllner does not specifically address the question of the conservative revolution; instead, he, like Sontheimer, presents Schmitt as a general anti-democratic conservative thinker. See Alfons Söllner, *Geschichte und Herrschaft: Studien zur materialistischen Sozialwissenschaft, 1929-1942* (Frankfurt a.M.: Suhrkamp, 1979), pp. 90-97, 104-109, 235.

26. See Bendersky, *Carl Schmitt*, *op. cit.*, pp. 35-39, 68-70, 109-111, and *passim*.

27. Herf, *Reactionary Modernism*, *op. cit.*, pp. 116-121.

28. *Ibid.*, pp. 27, 117-118.

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epithets as "action," "struggle," "will and decision" suffice.

Although the major postwar studies of the conservative revolution by Armin Mohler, Klemens von Klemperer, and Kurt Sontheimer are usually cited to buttress such interpretations, they do not provide any clear identification of Schmitt with this movement. Klemperer's book, perhaps the most thorough and incisive analysis of the conservative revolution, like the more recent study of Weimar conservative intellectuals by Walter Struve, completely excludes Schmitt from membership in this intellectual movement. While many writers, as a matter of course, habit, or schematic convenience, almost automatically rank Schmitt with Spengler, Jünger, *völkisch* conservatives, young conservatives, or Hans Zehrer's *Die Tat* circle, neither Klemperer nor Struve mention him in this context.[29] The works most often cited to establish Schmitt's relation to the conservative revolution, (Mohler and Sontheimer) are also less definitive or conclusive on this point than generally supposed.

Mohler claims that Schmitt held a prominent place among conservative revolutionary authors; but he dissociates Schmitt from both *völkisch* conservatives and national revolutionaries like Jünger. According to Mohler, Schmitt was a "young conservative."[30] Even this classification is very tenuous, since Mohler admits that Schmitt's ideas and writings did not belong to the center of the movement; nor did these relate directly to the aims of the conservative revolution. To Mohler, Schmitt was a "specialist," a scholar engaged primarily in factually-oriented analyses of the contemporary state of affairs. He remained on the periphery of a movement in which his writings were well known and widely read. Although his ideas influenced the language and formulations of conservative revolutionary authors, his writings never explicitly or clearly manifested the goals of these groups.

Acknowledging how exceptionally difficult it is to classify Schmitt, Mohler fails ultimately to provide an argument why Schmitt should be described as a conservative revolutionary. In fact, his examination of Schmitt consists of a one-paragraph discussion, plus a few other brief references to Schmitt's ideas (e.g., "neutralization") and an extensive

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29. See Klemperer, *New Conservatism*, *op. cit.*; and Walter Struve, *Elites against Democracy: Leadership Ideals in Bourgeois Political Thought in Germany, 1890-1933* (Princeton: Princeton University Press, 1973). Heide Gerstenberger's study of the major ideas, groups, and individual writers associated with the conservative revolution likewise does not include Schmitt in this movement. See *Der revolutionäre Konservatismus: Ein Beitrag zur Analyse des Liberalismus* (Berlin: Duncker & Humblot, 1969).

30. Mohler, *Konservative Revolution*, *op. cit.*, pp. 79-84, 177.

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bibliography. He furnishes no explanation whatever of Schmitt's political thought or of how Schmitt's ideas or activities related to this movement. What we find is a general characterization of Schmitt as a "loner" (*Einzelgänger*) whose concepts and language — "friend and enemy," "legality and legitimacy," etc. — exercised considerable influence.[31]

Sontheimer's analysis of Schmitt, though certainly more extensive than Mohler's, is less conclusive. His sweeping generalization that Schmitt's political ideas emanated from a "romantic irrational" relation to politics is not verified by the evidence; and he never attempts to prove his contention that Schmitt "was unknowingly a political romantic of the highest rank."[32] Relying explicitly on the framework constructed by Fijalkowski and Krockow, Sontheimer argues that the need to establish a *Führerstaat* and *Volksgemeinschaft* is inherent in Schmitt's constitutional interpretation. But more important for our specific discussion is that Sontheimer, in contrast to Mohler, does not actually categorize Schmitt as a conservative revolutionary. Along with other renowned jurists like Rudolf Smend and Gerhard Leibholz, (also labelled "political irrationalists" by Sontheimer), Schmitt emerges from Sontheimer's account as a proponent of a new type of constitutional theory and political sociology. These sociological jurists constituted one of the many anti-democratic groups of rightist intellectuals and a school of thought distinct from the literati of the conservative revolution. Schmitt is not discussed in those sections of the book devoted specifically to examining the nature or adherents of the "Conservative Revolution," "Revolutionary Nationalism" and "German *Völkisch* Thinkers."[33]

What Sontheimer actually argues is that this new theory of constitutional law generated numerous significant arguments which the anti-democratic right could use against the Weimar Republic, that rightist publicists discovered in Schmitt and others a wealth of scholarly sources to confirm and support the basic political ideas they already held. Sontheimer documents how Schmitt wielded an extraordinary degree of influence on a broad range of right-wing intellectual circles, that his *Crisis of Parliamentary Democracy* and *Concept of the Political* "probably found their widest resonance in the language of the nationalist literature of the Weimar Republic"; "hardly any nationalist author remained uninfluenced by" his friend-enemy theory.[34]

31. *Ibid.*, pp. 76, 83.
32. Sontheimer, *Antidemokratisches Denken*, *op. cit.*, p. 20, and *passim*.
33. *Ibid.*, pp. 148-169, 357-371.
34. *Ibid.*, pp. 109, 195, 198, 334-335.

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*The Weimar Reality*

The fact that Schmitt's writings were quite influential on the right does not in itself confirm that he was a conservative revolutionary, since his work influenced writers of very diverse political persuasions. Moreover, neither the study by Sontheimer nor that of Mohler explains whether Schmitt's scholarly arguments and concepts were utilized in the form he understood them or in distorted or vulgarized forms designed by conservative revolutionaries or rightists in general. Further questions are raised when one considers that the two scholarly Weimar studies which examine the conservative revolution do not support the interpretations of Schmitt as a member of this group or as an exponent of some irrational, romantic political philosophy. Quite the contrary, the books by Waldemar Gurian and Sigmund Neumann present Schmitt as an incisive constitutional and political analyst of the origins and nature of Weimar's crisis.[35] Gurian, a prominent Catholic scholar, and Neumann, a scholar affiliated with the democratic Hochschule für Politik in Berlin, were supporters of the Weimar Republic; both later established reputations as political scientists in the US.

Since their books appeared in 1932, the very peak of conservative revolutionary activity, Gurian and Neumann were able not only to analyze the literature but also to witness directly the activities and to evaluate the cumulative impact of this movement in the quickly changing and intense political atmosphere of late Weimar. In Neumann's work, Schmitt is not included in those sections which list the adherents, literature, and organizations of the conservative revolution, nor does Neumann categorize Schmitt with the "young conservatives," as later studies do. He handles Schmitt as a reputable scholarly source on the sociology of political parties and constitutional theory.[36] The same is true of Gurian's more comprehensive examination of the intellectual right, where Schmitt is not even discussed in the same sections as Moeller van den Bruck, von Gleichen, Spengler and others.[37] Rather than serving as a source for conservative revolutionary polemics, "The works of Carl Schmitt," wrote Gurian, "offer the best introduction to the political and social problems that gave rise to the new nationalism";

35. Walter Gerhart [Waldemar Gurian], *Um des Reiches Zukunft: Nationale Wiedergeburt oder politische Reaktion?* (Freiburg: Herder & Co., 1932); Sigmund Neumann, *Die deutschen Parteien: Wesen und Wandel nach dem Kriege* (Berlin: Junker & Dünnhaupt Verlag, 1932).

36. Neumann, *Die deutschen Parteien*, *op. cit.*, pp. 9, 33-38, 54, 60-72, 98-100, 106-118, 128-133, 137.

37. Gerhart, *Um des Reiches Zukunft*, *op. cit.*, pp. 34-39, 48-49, 89-91, 107-119, 124, 199.

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his legal analyses were "indispensable for an understanding of constitutional-political developments."[38] Even the contemporary Nazi literature on the subject seems to confirm the views of Gurian and Neumann. In *Der Aufstieg der nationale Idee*, Eugen Schmahl discusses at length such figures as Nietzsche, Moeller van den Bruck, Spengler, Jünger, etc., and explains how their ideas relate to the development of the new nationalism that culminated in the Nazi movement.[39] But Schmahl makes no reference to Schmitt, nor are Schmitt's ideas manifested in vulgarized form in his book.

As the works of Gurian and Neumann suggest, there is a remarkable contrast between prewar and postwar interpretations of Schmitt. Schmitt always had his critics. But during the 1920s his name was not associated with those of Spengler, Moeller van den Bruck, or other prophets of the conservative revolution but with Catholic intellectuals such as Carl Muth, a prominent advocate of Weimar democracy. In this period about half of Schmitt's articles appeared in the Catholic press, which stood behind the Republic. None of his writings were published by journals affiliated with the conservative revolution. The democratic Hochschule für Politik frequently called upon Schmitt for lectures, while conservative revolutionary institutions (e.g., the *Politisches Kolleg*) completely neglected him. Schmitt had no personal or institutional affiliations with the conservative revolutionary movement and his writings contain no references to the second-rate works of thinkers like Moeller van den Bruck; he lent no credence to their ideas or political goals.[40] As Schmitt stated categorically in reference to Othmar Spann and his concept of the organic state: "I refuse to appear on his side in print . . . because I currently take a problem such as political philosophy too seriously . . . ."[41]

There were, of course, general similarities between Schmitt and exponents of the conservative revolution. Like them, he was a nationalist and a proponent of a strong state with a powerful executive; he was also a critic of liberalism, who held a pessimistic view of human nature. These are, however, typical features of conservatives in general, which just as easily could be applied to *Vernunftrepublikanern* like Max Weber and Friedrich Meinecke. But Schmitt did not share any of those

38. *Ibid.*, p. 209.

39. Eugen Schmahl, *Der Aufstieg der national Idee* (Stuttgart: Union Deutsche Verlagsgesellschaft, 1933).

40. See Bendersky, *Carl Schmitt*, *op. cit.*, pp. 48-60.

41. Carl Schmitt to Dr. Alfred Bäumler, August 6, 1925, published in Piet Tommissen, "Problemen round de houding van Carl Schmitt in en na 1933," *Liber Memorialis* (Limburg: Economische Hogeschool, 1979), pp. 180-181.

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specific characteristics — neo-romanticism, irrationalism, *völkisch* thought, or pursuit of a national revolution — that gave the "conservative revolution" its distinctive identity. Only by expanding significantly the definition of a conservative revolutionary to include most Weimar conservatives, perhaps the entire intellectual right, could one accurately fit Schmitt into this category. Then, of course, this movement would lose the distinctiveness it had in reality, and the conservative revolution would become a meaningless concept.

Romanticism encountered few scholarly critics harsher than Schmitt. In *Political Romanticism* he is relentless in assaulting the entire subjective and occasionalist *Weltanschauung*. Rather than advancing an irrational philosophy, he assails the romantics for their lack of objectivity, as well as their inability to provide factually-based analyses and historical writing, or even to operate within the confines of commonly-accepted concrete reality. Certainly no Nietzschean nihilist, Schmitt refers disparagingly to Nietzsche's "deformed images" and the "sickness" of a philosophy that "plunges frenetically into the abyss of instinct and life."[42] He never displayed "political irresponsibility" through a "thirst for action and engagement for their own sake," as Herf contends.[43] Instead, Schmitt contrasts critically the irresponsibility of the political romantics with the conservative Edmund Burke, whom he lauds as a model of "responsible" and "accountable" political engagement.[44]

Schmitt recognized the irrational element in man and its political significance. But he considered this a danger to be kept in check rather than to be viewed as the foundation of a political philosophy. One might honestly ask precisely what irrational analyses, actions or solutions Schmitt ever offered regarding the problems plaguing the Weimar Republic. His *Political Romanticism* received its most hostile reception from those neo-romantic Weimar literary scholars who were promoting *völkisch* and communitarian philosophy, precisely because he had denied categorically that any romantic political theory was possible.[45] Political romantics were opportunists, totally deficient in moral

42. Carl Schmitt, *Politische Romantik* (Berlin: Duncker & Humblot, 1925), pp. 26-27.
43. Herf, *Reactionary Modernism*, *op. cit.*, pp. 27-28.
44. Schmitt, *Politische Romantik*, *op. cit.*, p. 161.
45. See Georg von Below, "Zum Streit um die Deutung der Romantik," *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 81, No. 1 (1926), pp. 154-162; Paul Kluckhohn, *Persönlichkeit und Gemeinschaft: Studien zur Staatsauffassung der deutschen Romantik* (Tübingen: Max Niemeyer Verlag, 1925), pp. 96-97, 110-111; Kurt Borries, *Die Romantik und die Geschichte: Studium zur romantischen Lebensform* (Berlin: Deutsche Verlagsgesellschaft für Politik und Geschichte, 1925), pp. 84-85, 197-199, 228-229; Richard Samuel, *Die poetische Staats- und Geschichtsauffassung Friedrich von Hardenbergs*

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or ethical standards, who contributed nothing to the development of the theory of the state or history. Schmitt's other Weimar writings also contain no elements of *völkisch*, racist, or anti-Semitic thought. It was because Schmitt did not share any of these sentiments that Nazi ideologues subsequently attacked his political theory.[46]

The postwar identification of Schmitt with the conservative revolution can be partially explained by the fact that Schmitt did attract the attention of several prominent members of this movement during the last three years of the Republic. This is not surprising, considering that Schmitt had become a constitutional adviser to General von Schleicher and the presidential government of Heinrich Brüning. By then one of the most widely read political and legal theorists of the day, Schmitt had written on numerous subjects of urgent political importance, from dictatorship and Art. 48, to the failings of liberalism, political parties, and parliamentary government as practiced in Weimar. All of these were of particular interest to conservative revolutionaries.

In 1930 conservative revolutionary writers began exploiting Schmitt's scholarly works and he personally became acquainted with Ernst Jünger, Wilhelm Stapel, and Albrecht Erich Günther. These relations should not, however, be construed as proof that Schmitt belonged to this ideological camp. He never wrote anything promoting the tenets of this ideology, nor were his own political writings and activities supportive of their goal of eliminating Weimar in favor of an authoritarian "New State." Ignoring Schmitt's essential arguments of restoring stability through existing institutions, writers for *Die Tat* and *Deutsches Volkstum* used only those aspects of Schmitt's works that suited their immediate political or ideological needs. Through distortion or simplistic representation, scholarship became propaganda in the service of their cause.[47] Despite this exploitation, nowhere in Schmitt's

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(Novalis) (Frankfurt a.M.: Verlag Moritz Diesterweg, 1925), pp. 3-4, 299-300. See also Reinhold Aris, *Die Staatslehre Adam Müllers in ihrem Verhältnis zur deutschen Romantik* (Tübingen: Verlag J. C. B. Mohr, 1929); and Gisela von Busse, *Die Lehre vom Staat als Organismus: Kritische Untersuchungen zur Staatsphilosophie Adam Müllers* (Berlin: Junker & Dünnhaupt, 1928).

46. Otto Koellreutter, *Volk und Staat in der Weltanschauung Nationalsozialismus* (Berlin: Pan-Verlagsgesellschaft, 1935), pp. 6-11; and *Der deutsche Führerstaat* (Tübingen: Verlag J. C. B. Mohr, 1934), p. 16. "Eine peinliche Ehrenrettung," *Das Schwarze Korps*, Folge 49 (December 3, 1936); and "Es wird immer noch peinlicher, *Das Schwarze Korps*, Folge 50 (December 10, 1936). See also the SS Sicherheitsdienst files on Schmitt in the Institut für Zeitgeschichte, Munich, AKZ 4062/69, Fa 503, Nos. 1-2.

47. Hans Zehrer, "Rechts oder Links?" *Die Tat*, Vol. 23, No. 7 (October 1931), p. 509; Horst Grüneberg, "Die föderalistische Kulisse" *Die Tat*, Vol. 23, No. 4 (July 1931), pp. 286-303; "Mittelstandspolitik-Staatspolitik," *Die Tat*, Vol. 23, No. 3 (June 1931).

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writings will one find support for such things as Jünger's total mobilization of society into a worker-soldier state, Hans Zehrer's post-capitalistic authoritarian regime, or Stapel's rejuvenated Christian nation. Nor will one discover in Schmitt's Weimar publications any advocacy of "national revolution."

Schmitt's association with Jünger, Stapel, and Günther were part of the very diverse intellectual and personal relations he had in Berlin with Catholic, leftist, liberal, and conservative thinkers. He could converse as easily with the expressionist Franz Blei and the national bolshevik Ernst Niekisch, as he could with the liberal-democratic Theodor Heuss and Moritz Julius Bonn.[48] His primary point of political agreement with Stapel and Günther was the presidential system and the need to contain the National Socialists. But whereas Stapel and Günther looked to the presidential system as a transition to a new authoritarian state, Schmitt favored the strengthening of state power within the existing constitutional framework. During this entire period he published only three short articles in journals affiliated with the conservative revolution. Two warned against tampering with the Weimar Constitution in the midst of the crisis facing the Republic; the other was an urgent plea to the German electorate not to provide the Nazis with a majority.[49]

By no means was the impact of Schmitt's ideas limited to conservative revolutionaries. A list of distinguished leftist writers influenced by him would, among others, include Walter Benjamin, Ernst Fraenkel, Otto Kirchheimer, Karl Mannheim, Robert Michels, and Franz Neumann.[50] The democratic Hochschule für Politik, the original publisher

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pp. 203-210; "Zur Theorie des Antiparlamentarismus," *Die Tat*, Vol. 22, No. 2 (May 1930), pp. 115-121; and "Diktatur ante portas!" *Die Tat*, Vol. 22, No. 3 (June 1930), pp. 194-202. See also Friedrich Grüter, "Der Rechtsstaat in der Krise," *Deutsches Volkstum* (April 1, 1932), pp. 260-265.

48. Franz Blei, "Ein deutsches Gespräch," *Neue Schweizer Rundschau* (July 1932), pp. 518-533; Ernst Niekisch, *Gewagtes Leben: Begegnungen und Begebnisse* (Cologne: Kiepenheuer & Witsch, 1958), pp. 241-242; and see letter of Theodor Heuss to Carl Schmitt, January 20, 1930, in Carl Schmitt, *Nachlass*, Hauptstaatsarchiv, Düsseldorf.

49. Carl Schmitt, "Eine Warnung vor falschen politischen Fragestellungen," *Der Ring*, Vol. 3, No. 48 (November 30, 1930), pp. 844-845; "Zur politischen Situation in Deutschland," *Der Kunstwart*, Vol. 44, No. 4 (October 1930-September 1931), pp. 253-256; and "Legalität und gleiche Chance politischer Machtgewinnung," *Deutsches Volkstum* (July 1932), pp. 557-564.

50. See letter of Walter Benjamin to Carl Schmitt, December 9, 1930; and letter of Franz Neumann to Schmitt, September 7, 1932, Schmitt, *Nachlass, op. cit.* Ernst Fraenkel, "Verfassungsreform und Sozialdemokratie," *Die Gesellschaft*, Vol. 9 (1932), pp. 488-499; Otto Kirchheimer, "The Socialist and Bolshevik Theory of the State," and "Weimar — And What Then?" in *Politics, Law, and Social Change: Selected Essays of*

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of Schmitt's friend-enemy thesis, continued to have him teach courses until the end of the Republic. The Catholic press (*Hochland, Germania, Kölnische Volkszeitung*), still a pillar of republicanism, provided Schmitt with extensive favorable coverage and solicited articles from him until mid-1932. Like the conservative revolutionaries, each used Schmitt for their own purposes. In his analysis of the crisis of liberalism and the *Parteienstaat* the left found a convenient arsenal of ideas to be mobilized in criticizing the existing system. But they rejected his position on presidential power. While the Center Party backed the presidential system, the Catholic press viewed Schmitt's interpretation of the president as the defender of the constitution as consistent with democratic principles and as a necessary solution to the political and economic crisis of late Weimar. When Brüning's removal brought the Center into opposition in 1932, these same ideas were then assailed in the Catholic press as anti-democratic.[51]

***Stability vs. Revolutionary Change***

Throughout these years Schmitt remained consistent in his essential political position and constitutional interpretations. He was not motivated by romantic political fantasies, an irrational *Lebensphilosophie* of violence, or some vague notion of a national revolution. He stood in the midst of Berlin, witnessing the paralysis of the *Parteienstaat*, the radicalizing repercussions of an ever-worsening depression, and the attacks on the Republic from the left and the right. In this concrete situation he viewed presidential power as a necessary means of compensating for the weakness of the parliamentary system and of preventing the acquisition of power by either the communists or the Nazis. In the early years of the Republic he saw the communists as the greater threat; in the latter years he sought to prevent the Nazis from taking power.

Contrary to the aspirations and politics of conservative revolutionaries, Schmitt rejected any attempt to introduce an entirely new political or legal order. He promoted the restoration of stability within the context of the Weimar Constitution and the existing state; he

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Otto Kirchheimer, ed. Frederic S. Burin and Kurt L. Schell (New York: Columbia University Press, 1969), pp. 3-21, 33-74; Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* (New York: Harcourt Brace, 1936), pp. 64, 124, 139, 141; and *From Karl Mannheim*, ed. Kurt Wolff (New York: Oxford University Press, 1971), pp. 248, 291; Robert Michels, *Zur Soziologie des Parteiwesens in der modernen Demokratie: Untersuchungen über die oligarchischen Tendenzen des Gruppenlebens* (Stuttgart: Alfred Kröner Verlag, 1970), p. xviii. See also Söllner, "Conservative Revolution," *op. cit.*

51. See Bendersky, *Carl Schmitt*, *op. cit.*, pp. 140-143, 178-181.

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definitely feared that presidential legitimacy and power might be undermined if the essence of the constitutional order were ever called into question. In his official *Gutachten* for the government, his numerous publications, and public speeches between 1930 and January 1933, he maintained this position. At the beginning of the presidential system, he warned that the Weimar Constitution " . . . was better left alone, unless one wanted to open the way for incalculable and dangerous experiments;"[52] and argued that the presidential system did not constitute ". . . a dictatorship in some revolutionary sense or a *Staatsstreich*. [It does] not bring into play a new principle of government, but in a difficult situation attempts to protect the existing constitution against the breakdown of its central organs."[53] At the time, it was a point perfectly clear and rational to Carl J. Friedrich. Writing in *Foreign Affairs*, Friedrich explained that, "As has been shown by Carl Schmitt, one of the most astute constitutional theorists, [the purpose of] Article 48 . . . is the maintenance of the Constitution . . . . Truly benevolent despotism of this sort forestalls internal chaos and a complete breakdown of the government."[54] Schmitt had held this position since his 1921 writings on the Weimar Constitution and presidential authority in a state of exception.[55] At the end of 1932 he still contended that there was " . . . no longer much latitude for great constitutional experiments . . . therefore, it is better first of all not to establish authority through new institutions . . . [instead] the government should utilize all constitutional means, but all constitutional means, which stand at its disposal."[56] Finally, Schmitt never wavered in his support for Schleicher, whom he served as adviser and who, like himself, never entertained any of the political goals of the conservative revolution.

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52. Schmitt, "Zur politischen Situation," *op. cit.*, p. 256.

53. Carl Schmitt, "Die staatsrechtliche Bedeutung der Notverordnung, insbesondere ihre Rechtsgültigkeit," in *Verfassungsrechtliche Aufsätze aus den Jahre 1924-1954: Materialien zu einer Verfassungslehre* (Berlin: Duncker & Humblot, 1953), p. 260.

54. Carl Joachim Friedrich, "Dictatorship in Germany?" *Foreign Affairs*, Vol. 9, No. 1 (October 1930), pp. 129, 131-132.

55. Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Munich: Duncker & Humblot, 1921); *Der Hüter der Verfassung* (Tübingen: Verlag J. C. B. Mohr, 1931); and *Legalität und Legitimität* (Munich: Duncker & Humblot, 1932).

56. Carl Schmitt, "Gesunde Wirtschaft im starken Staat," *Mitteilungen des Vereins zur Wahrung der gemeinsamen wirtschaftlichen Interessen in Rheinland und Westfalen*, Vol. 1, No. 21 (November 23, 1932), pp. 30-31.

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# *American Imperialism and International Law: Carl Schmitt on the US in World Affairs*

G. L. Ulmen

Every expansion of power, economic or any other, must find a justification, a principle of legitimacy. All concepts and formulas, expressions and slogans that serve this purpose evidence that all human activity, including politics and imperialism, is by its very nature intellectual and cultural. Carl Schmitt clearly demonstrates that American imperialism corresponds to the legitimating principles and justifying forms of "modern" imperialism. It is in this sense that we must understand his statement: "American imperialism is certainly an economic imperialism; but, as such, it is no less intensively imperialistic."[1]

Considering the present global antithesis of East and West, Schmitt finds iconography more historically and analytically suitable than ideology: "Every concrete reorientation is already a kind of manifestation. For this reason, wherever there are icons and iconography there is also and accordingly the possibility of an iconoclasm."[2] In Schmitt's understanding, iconography is constituted of those various conceptions of the world deriving from religion and tradition which have their own geography.[3] He speaks of a circulation of iconographies: a rotation and relocation of problems as well as elites. The great struggle begun during the Age of Discovery, particularly the discovery of the New World, soon became a confessional struggle between Roman Catholicism and northern Protestantism, Jesuitism and Calvinism. Out of that iconographic struggle arose the first spatial order or *nomos* of the earth:

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1. Carl Schmitt, "Völkerrechtliche Formen des modernen Imperialismus," (1932), *Positionen und Begriffe im Kampf mit Weimar — Genf — Versailles 1923-1939* (Hamburg: Hanseatische Verlagsanstalt, 1940), p. 162.
2. Carl Schmitt, "Die geschichtliche Struktur des heutigen Welt-Gegensatzes von Ost und West," *Freundschaftliche Begegnungen: Festschrift für Ernst Jünger zum 60. Geburtstag* (Frankfurt a/M: Vittorio Klostermann, 1955), p. 141.
3. Schmitt borrows the concept of *iconographie régionale* from Jean Gottmann, *La politique des états et leur géographie* (Paris: Librairie Armand Colin, 1953), p. 220.



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the *jus publicum Europaeum*.

The rise of the New World in general and the US in particular ultimately destroyed that spatial order but failed to create a new *nomos* of the earth. The present result is a spatial chaos in which the iconographic struggle between the US and the USSR is pursued in a context of pseudo-universalism. Without underrating the contribution of the USSR to this situation, Schmitt finds the entrance of the US into world affairs the primary factor in changing the rules of the game. What distinguishes his iconoclasm of "American imperialism" is his juridical approach. Like much of his legacy, it raises more questions than it answers. But these questions are still engaging, because his argumentation is conceptually concrete and intellectually consistent, relating American history to the history of international law.

Following WWI, Schmitt increasingly saw the world situation in terms of Tocqueville's great prognosis at the end of the first volume of *Democracy in America*: "There are now two great nations in the world which, starting from different points, seem to be advancing to the same goal: the Russians and the Anglo-Americans . . . . Their point of departure is different and their paths diverse; nevertheless, each seems called by secret design of Providence one day to hold in its hands the destinies of half the world."[4] As Tocqueville saw it, Russia and America were the respective bearers of the irresistible forces of centralization and democratization propelling humanity toward a new future in which Europe would be overshadowed by the colossus in the East and the colossus in the West. As Schmitt saw it, the present struggle between East and West is not polar but dialectical. In juridical terms, it is fundamentally an opposition between a continental and a maritime power without precedent in human history. The USSR is the heart of the greatest landmass of the earth; the US, the decisive power of the world's oceans. The distinction is only superficially geographical; it is specifically *spatial* and *political*.[5]

In the early 1920s, Schmitt was more concerned with the East because the Bolshevik Revolution and the nearness of Russia to Germany

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4. Alexis de Tocqueville, *Democracy in America*, Edited by J. P. Mayer and Max Lerner, Translated by George Lawrence (New York, Evanston and London: Harper and Row, 1966), p. 378.

5. Schmitt was not averse to learning from Karl Haushofer and his journal, *Zeitschrift für Geopolitik*, but his approach should not be confused with Haushofer's concept of "geopolitics," which is as unjuridical as it is politically imprecise and problematic. For a discussion and critique of Haushofer's approach, see Karl A. Wittfogel, "Geopolitics, Geographical Materialism and Marxism" (1929), Translated by G. L. Ulmen, *Antipode: A Radical Journal of Geography*, Vol. 17, Nr. 1 (1985), pp. 21ff.

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and Europe made the threat appear more imminent.[6] But throughout the decade he came increasingly to see the West in general and the US in particular as ultimately more decisive in supplanting Europe as the political and cultural center of the earth, the measure of civilization and the source of international law — in creating a new epoch.[7] His approach to this new concrete situation can only be understood from the concept of *nomos*, which poses the basic questions of any economic and social order. In the final analysis, his iconographic approach leads him to a seminal understanding of the tyranny of concepts or conceptual imperialism, even to the "tyranny of values" and cultural imperialism.

### *The Concept of Nomos*

Concretely, *nomos* begins with land.[8] All pre-global orders were

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6. See especially, Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedanken bis zum proletarischen Klassenkampf* (1921), Fourth Edition (Berlin: Duncker & Humblot, 1978); and the opening lines of "Das Zeitalter der Neutralisierungen und Politisierungen" (1929), Republished as an Appendix to *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien* (Berlin: Duncker & Humblot, 1963), p. 79.

7. See Carl Schmitt, "Die Rheinlande als Objekt internationaler Politik" (1925), "Der Völkerbund und Europa" (1928), "Völkerrechtliche Probleme im Rheingebiet" (1928), all published in Schmitt, *Positionen und Begriffe*, *op.cit.*, pp. 29, 90 and 106 respectively. In 1932 Schmitt analyzed American imperialism along lines suggested by Tocqueville in *Democracy in America*: "Völkerrechtliche Formen des modernen Imperialismus," *Positionen und Begriffe*, *op.cit.*, pp. 162-180. In 1937 he examined the turn to a discriminatory concept of war promoted by the US after WWI: *Die Wendung zum diskriminierenden Kriegsbegriff*, Schriften der Akademie für Deutsches Recht, Nr. 5 (Munich: Duncker & Humblot, 1938). In 1939 he published a treatise on *Grossraum* inspired by the original concept of the Monroe Doctrine: *Völkerrechtliche Grossraumordnung*, Fourth Edition (Berlin, Leipzig, Vienna: Deutscher Rechtsverlag, 1941). In 1941 he outlined and researched a major work on Tocqueville, of which only a vignette appeared after the war: "Historiographia in Nuce: Alexis de Tocqueville" (August 1946), *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950), pp. 25-33. In 1942 he published a world-historical essay on land and sea containing a paean of praise for Melville as the Homer of the world's oceans and concluding with a link between the British Empire and its greater successor, the American Empire: *Land und Meer: Eine weltgeschichtliche Betrachtung*, Third Edition (Cologne-Lövenich: Edition Maschke "Hohenheim," 1981). In 1943 he organized a conference in Madrid on the transformation of the structure of international law at which he further developed his ideas on the "American continent" and its spatial consequences: *Cambio de estructura del Derecho Internacional*, Conferencia del Professor de la Universidad de Berlin Dr. Carl Schmitt en el Instituto de Estudios Politicos (Madrid: Instituto de Estudios Politicos, June, 1943). In 1950 he ended his last major work, on the *nomos* of the earth in the international law of the *jus publicum Europaeum*, with an analysis of the global significance of the Western Hemisphere and the implications for international law of US dominance in world affairs: *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*, Second Edition (Berlin: Duncker & Humblot, 1974).

8. In line with his sociology of concepts, Schmitt traces the concept of *nomos* back

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essentially landbound. For Schmitt, land appropriation (*Landnahme*) is the original and most radical title on which all law is based. It is the presupposition of agriculture, cities, military organization; the distinction between public and private law, public and private ownership, *imperium* and *dominium*. It is also the presupposition of international law.

In jurisprudence a second meaning of *nomos* had largely supplanted the first by the time Hobbes wrote his Leviathan: "Seeing therefore the introduction of propriety is an effect of commonwealth, which can do nothing but by the person that represents it, it is the act only of the sovereign; and consisteth in the laws which none can make that have not the sovereign power and this they well knew of old, who called that *nomos*, that is to say, *distribution*, which we call law; and defined justice, by *distributing* to every man *his own*. In this distribution, the first law, is for division of the land itself . . . ."[9] The third meaning of *nomos*, production, presupposes the appropriation and distribution of land. It is specifically concerned with the commutable right of buying and selling in the market; it derives its content from the types and means of the transport and manufacture of goods; it is economic management, utility and profitability. Essentially, it is productive growth.

Three questions are fundamental to any economic and social order or theory: Where and how was the land appropriated? Where and how was it divided? Where and how did it prosper? The main problem for Schmitt is the *succession* of the processes embodied in these questions, which has changed often with the emphasis and estimation of each in accordance with changes in outlooks, historical situations, means of transport, etc. He finds the clearest expression of the precedent of appropriation for distribution and production — the clearest expression of the given understanding of politics — in imperialism. The fact that imperialistic expansion — appropriation, especially of land — leads the way to distribution and production is something that Lenin immediately understood as atavistic, reactionary and ultimately inhuman.

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to its philological root. However, he is here not concerned with the philological ramifications of *nomos* but with the sense in which jurists have generally used it. On the sociology of concepts, see Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, Translated by George Schwab (Cambridge, MA: The MIT Press, 1985), pp. 36-52. See especially, Carl Schmitt, "Nehmen/Teilen/Weiden: Ein Versuch, die Grundfragen jeder Sozial- und Wirtschaftsordnung vom Nomos her richtig zu stellen" (1953), *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialen zu einer Verfassungslehre*, Second Edition (Berlin: Duncker & Humblot, 1973), pp. 489-504.

9. *Leviathan, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil*, The English Works of Thomas Hobbes of Malmesbury; Now First Collected and Edited by Sir William Molesworth, Bart., Vol. 3 (London: John Bohn, 1839), Second Reprint (Aalen: Scientia Verlag, 1966), p. 234.

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His moral indignation was consistent with the numerous arguments against an enemy perceived as taking something belonging to another that one finds in Marxism and all other "progressive" ideologies. Here socialism takes its place beside classical political economy and its liberalism, which is also concerned primarily with production and distribution. Progress and economic freedom presumably follow from freeing the powers of production. The expected increase in production and the accumulation of consumer goods ultimately solves all problems of appropriation and distribution. Once the standard of living grows higher, distribution becomes easier and appropriation is finally seen as not only immoral but economically irrational.

Precisely because socialism raises the question of equal distribution, it also raises the question of the succession of the three original processes of social and economic life. Focusing on this question, Schmitt finds formidable disparities in the numerous doctrines of socialism. He calls attention to Weber's distinction between the rival forms of evolutionary and revolutionary socialism.[10] But he is more concerned with the deep disparity between a socialism based on morality (Proudhon) and another based on the philosophy of history (Marx). With respect to the latter, Marx considered an unlimited increase in production essential to progressive liberalism. Consequently, he could treat the question of equal distribution as a later concern and focus on the process of appropriation: expropriation of the expropriators. In place of the pre-industrial right of land appropriation, Marx substituted the appropriation of the means of production or, in Schmitt's terms, the appropriation of industry (*Industrienahme*). Plunder may cease, but appropriation as the precondition of new distribution does not. If all appropriation is abolished, and if the problem of distribution is reduced to a minimum, because it is too difficult to ascertain not only general principles but also proper procedures, then there is only production. But all economic and social systems so understood are somewhat utopian. If there are only problems of production, and if production alone can create enough wealth to eliminate all problems of production and distribution, then economic management also ceases because it always presumes scarcity. For Schmitt, to maintain there are only problems of distribution and/or production, i.e., that appropriation has ceased, is to indulge in fictions whose over-simplification

10. Schmitt, "Nehmen/Teilen/Weiden," *Verfassungsrechtliche Aufsätze*, *op.cit.*, p. 499. Cf. Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*, Fourth Edition, Prepared by Johannes Winckelmann (Tübingen: J.C.B. Mohr [Paul Siebeck], 1956), p. 61.

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can only be overcome by a deeper simplification — a radical sociology — of concepts, specifically of *nomos*.

The first *nomos* of the earth began with European land appropriations of the New World. Schmitt relates the history of European jurisprudence to this occurrence, even as he does the end of the *jus publicum Europaeum* to the emergence of the Western Hemisphere and the rise of the US to world power. He charts the conceptual course of international law against the concrete background of the history of imperialism from its European beginnings to its "most modern" — American — form. Seen in this light, the Western Hemisphere in general and the US in particular are not peripheral but integral to his thinking.

### *The New World and the* Jus Publicum Europaeum

The discovery of the New World and the ensuing struggle for its land initiated what Schmitt calls "global linear thinking."[11] Once maps and globes indicated the actual form of this New World, lines of division were drawn: first the *rayas* of the Spanish and the Portuguese, then the "amity lines" of the French and the English. "Europe" ended where the New World began. The world "beyond the line" was without law. It appeared to both Hegel and Marx as a still stateless sphere of civil society.[12] In Schmitt's view, the 16th century antithesis of civil society and the state remained decisive, as evidenced in the liberal separation of economics and politics.

If the *rayas* were essentially distributive, amity lines were essentially combative in that legal title became based on the concepts of discovery and occupation. The justification for land appropriations in the New World was the need to spread the gospel. Although jurists did not hold with the theological distinction between believers and nonbelievers,[13] it nevertheless became the basis of the distinction between civilized and barbarian, European and non-European. Following the Reformation, theologians were excluded from questions of international law.[14] From the 16th to the 20th century Eurocentric international law

11. Schmitt, *Der Nomos der Erde*, *op.cit*, pp. 54ff.
12. *Ibid.*, pp. 64f, 65n, 68 and 269n.
13. This distinction was made by the Spanish dominican, Francisco de Vitoria. The scholastic doctrine of *justum bellum* already contained the concept of *justa causa*, together with stipulations that the declaration of war must be made by a legitimate authority and that the just intention must be to do good and avoid evil. As both a theologian and a jurist, Vitoria built upon this doctrine.
14. For Schmitt, the true jurist of the historical turning-point from the Middle Ages to the modern age was Albericus Gentilis, who formulated the clarion call for theologians to remain silent.

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sought to repress the theologically-based concept of *justa causa*, the just cause of war. More specifically, the formal criterion for the determination of a just war was no longer the legal authority of the Church but the equally legal sovereignty of states. Instead of the *justa causa,* international law became based on the concept of *justus hostis*, the just enemy, whereby every war between equally sovereign states was a *justum bellum*, a just war. In Schmitt's view, the transformation of moral-theological concepts into juridical-political arguments, specifically the juridical formulation of *justus hostis*, resulted in a limitation of war, the transition to "war in form" similar to a duel, the rationalization and even "humanization" of war.[15] This new concrete order and containment of war derived both from theoretical and practical factors, among them the conception of a European equilibrium of states resulting from land appropriations in the New World.[16]

In the perspective of the *jus publicum Europaeum* all land belonged either to European states or open spaces free to be occupied. The sea remained outside the spatial-political order. The connecting link between the distinct orders of land and sea was the island of England, which became the center of a world empire because the British turned from firm land to free sea.[17] Spain remained too landbound and, in spite of its oversea empire, did not become a sea power. France opted for the terrestrial form of government and became the paradigm for the continental European state. After the Treaty of Utrecht (1713), Holland also became landbound. But England was not so deeply enmeshed as her rivals in European politics. England alone took the step from a landbound to a maritime existence and thereby became the bearer of the universal maritime domain of a Eurocentric global order and the defender of the other side of the *jus publicum Europaeum*.

The English were the pioneers of the new freedom of the sea as an essentially non-state sphere: the partisans of the sea in the transitional period of the global struggle between Catholic and Protestant powers. Schmitt considered the English decision for the sea greater and deeper than the conceptually clear choice of continental European states. It was no accident that Hobbes, the greatest of all decisionistic thinkers, was an Englishman. He recognized the real potential of the sea for war

15. Cf. Carl Schmitt, "Vorwort," *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien*, *op. cit.*, pp. 9-19. and Schmitt, *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen*, Second Edition (Berlin: Duncker & Humblot, 1975), pp. 16-20.

16. Schmitt, *Der Nomos der Erde*, *op.cit.*, pp. 91f.

17. *Ibid.*, pp. 19f. See also, Schmitt, *Land und Meer*, *op.cit.*, pp. 97f.

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and peace. For more than three centuries England remained in an intermediate position with respect to the European continent — it was *of*, but not *in* Europe. As master of the balance between land and sea, England at once promoted the equilibrium of landbound continental states and prevented a reciprocal equilibrium of sea powers.

According to Schmitt, England not only played a pivotal role in the creation and maintenance of the *jus publicum Europaeum*, but also in launching a new epoch. Even as she took the leap into the new world of modern technology, she prefigured the rise of the New World that would eclipse the *jus publicum Europaeum*. It was essential that the industrial revolution started on land and was consummated at sea.[18] In Schmitt's figurative language, "The leviathan transformed itself from a great fish into a machine, and the machine changed the relation of men to the sea."[19] America followed England to the sea and thus to industrialism, commercialism, imperialism and universalism. On the surface, the US became the magnified mirror of its initially greater enemy. In a deeper sense, the evolution of its own political idea created a new epoch.

***The Political Awakening of the Western Hemisphere***

The third global line — the Western Hemisphere — was drawn only after the spatial order of European sovereign states was established. It set the New World apart as an independent spatial order, although it still had a historical and dialectical relation to the preceding lines. The English background of the first formulation of America's hemispheric interests — the Monroe Doctrine — is indicative of the special relation between the young republic and its former imperial master.[20] In March 1823, British Prime Minister Canning announced that England could not permit France to acquire any of the former Spanish colonies in the Western Hemisphere. On August 16, he made informal overtures to his American counterpart for joint action on Latin American affairs. Secretary of State Adams, not wanting "to come in as a cockboat in the wake of the British man-of-war," did not respond, and Canning, having secured assurances from France, did not pursue the matter further. Nevertheless, President Monroe seized on the idea of

18. According to Schmitt, only Hegel observed this correlation: "What the earth is for the principle of family life — firm ground and soil conditions — so is the externally revivifying natural element of the sea for industry." Quoted in Schmitt, *Der Nomos der Erde*, *op.cit.*, p. 20.

19. Schmitt, *Land und Meer*, *op.cit.*, p. 98.

20. Cf. *Documents of American History*, Edited by Henry Steele Commager (New York: Appleton-Century-Crofts, 1948), pp. 234f.

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excluding colonization in the Western Hemisphere in the first draft of his famous doctrine on November 21, when he simultaneously proposed to champion the cause of Greek revolutionaries. Adams prevailed upon Monroe to accept a clear-cut concept of the two hemispheres, arguing that American interference in European affairs would weaken the American initiative.

In spite of the British initiative, the essential ideas of the Monroe Doctrine go far back into the colonial period. They had been repeatedly foreshadowed, if not definitely formulated by Washington, Adams, Jefferson and others. In a sense, Monroe merely codified existing ideas, such as those of the two hemispheres, no transfer of territory, non-intervention and non-entanglement, all of which were conceived in terms of security and self-defense. What was new in the proclamation of his doctrine on December 2, 1823 was that the US would fight to defend the southern republics. Also, as Schmitt notes, he utilized the word "hemisphere" specifically to distinguish the American political system from the absolute monarchies of Europe.[21] Thereafter, the Monroe Doctrine and the Western Hemisphere were understood as defining the sphere of US "special interests."

Spatially, the Monroe Doctrine designated an area far exceeding US territorial boundaries — a *Grossraum*. At the time it was announced, the American government forbid foreign intervention in the Western Hemisphere and avowed it would not intervene in European political affairs. For Schmitt: "This is the core of the great original Monroe Doctrine, a genuine *Grossraum* principle, namely the union of a politically-awakened people, a political idea and, on the basis of this idea, a politically-dominant *Grossraum* excluding foreign intervention."[22] The source of its power, the secret of its historical actuality — its *arcanum* — lies in international law. Not only does it constitute a major definition of the modern spatial configuration of the earth and its history, it is also the most important example of "global linear thinking." Different from the *rayas* and amity lines, which resulted from European appropriations of land in the New World, the American line was drawn against such appropriations. From the American perspective, it was basically defensive, although it created a spatial sphere for American appropriations of American soil.

To illustrate the original thinking behind the Monroe Doctrine, Schmitt utilizes two formulations of the so-called Jefferson Line.[23] In

21. Schmitt, *Der Nomos der Erde*, *op.cit.*, pp. 256f.
22. Schmitt, *Völkerrechtliche Grossraumordnung*, *op.cit.*, p. 20.
23. Schmitt, *Der Nomos der Erde*, *op.cit.*, pp. 262ff.

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1812 Jefferson said the fate of England would soon be decided, that its present role would soon be ended, and that once the US was strong enough to apply its own law to its own hemisphere the Atlantic meridian would separate the American side of peace from the European side of war. What was typical of amity lines was here reversed — America was no longer a theater of relentless struggle but rather the opposite, a sphere of peace, while the rest of the world was seen as a theater of wars. In 1820 Jefferson said: "The day of the sea requires that both hemispheres be separated and that on this side there should be no European shot fired and on the other no American shot."[24] Once the Western Hemisphere was conceived as a New World free from the corruption of the Old, it had also to develop a new international law.

In 1910 a Chilean jurist formulated just such a distinctively American international law based on the Monroe Doctrine as the "true gospel of the new continent."[25] But no new international law, American or any other, could be established without a new *nomos* of the earth, and such was not then (nor even now) possible. In 1950 Schmitt observed: "Today the former Eurocentric order of international law is going under. It was the result of a fabulous and unexpected discovery of a New World — an unrepeatable historical event. One can only phantasize about a modern parallel, such as men discovering a new and completely unknown world on the way to the moon that they could freely exploit and use to ease the burden of their struggles on earth. The question of a new *nomos* of the earth can only be answered with such phantasies. It will as little be answered by new scientific discoveries."[26]

Schmitt sought an answer in a return to elemental terrestrial orders, but he was not overly optimistic about the prospects, particularly given the inherent contradictions of American iconography. The fact that the US was the first country to recognize the flag of the Congo was already indicative that the Eurocentric order of international law was losing its validity. Schmitt dates the last bloom of the *jus publicum Europaeum* — the last European appropriation of non-European soil, the last great act of Eurocentric international law — to the Congo Conference of 1885.[27]

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24. *Ibid.*, p. 263.
25. Alejandro Alvarez, *Le droit international américain: son fondement, sa nature: d'après l'histoire diplomatique des états du nouveau monde et leur vie politique et économique* (Paris: A. Pedron, 1910). See also Alejandro Alvarez, *The Monroe Doctrine: Its Importance in the International Life of the States of the New World* (New York: Carnegie Endowment for International Peace, Division of International Law, 1924).
26. *Der Nomos der Erde*, *op. cit.*, p. 6.
27. *Ibid.*, pp. 188ff.

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Once it was no longer possible to distinguish a European state from a colonial or other "state" outside Europe, the spatial structure of the *jus publicum Europaeum* collapsed: once the distinction between the "civilized" and "non-civilized" world lost its meaning, the European system of states lost its homogeneity. Between 1890 and 1918 the *jus publicum Europaeum* "dissolved," whereby international law lost its grounding in a *nomos* of the earth or, more specifically, the *nomos* of the earth lost its grounding in the international law of the *jus publicum Europaeum*. While the shell of the old order continues to provide a kind of model, international law has become more a loose collection of generally-accepted rules existing in a spatial chaos.

The question of what undermined the old order, even of the continuing dilemma of world order, is not, however, so easily answered with the rise of the US to world power. It had as much to do with the globalization of economy, which above all the English promoted and the Americans brought to fruition. Since all the states of the *jus publicum Europaeum* belonged to the same economic system, whatever stage of their development, the rule was *cuius regio, eius economia*. It became *cuius economia, eius regio*. The old spatial order of the earth based on the European state was undermined by universalism and commercialism.[28] As Schmitt puts it: "Over, under, and beside the state-political boundaries of what appeared to be a purely political and international law between states spread a free, i.e., non-state sphere of economy permeating everything: a world economy."[29]

What began as political sovereignty became economic self-interest as this international law of free trade was linked with the British Empire's interpretation of the freedom of the sea. At the beginning of the 20th

28. Although the global problem of a new *nomos* of the earth went unrecognized by most jurists, Schmitt indicates that German political economists were already at the turn of the century discussing the question of universalism or pluralism of the world economy. He mentions particularly Gustav von Schmoller, Werner Sombart, and Heinrich Dietzel. In the controversy concerning agricultural and industrial development, Schmoller said that the three world empires of the time — the British Empire, the US and Russia — evidenced the tendency to become individually autarchic ("Die Theorie von den drei Weltreichen," *Schmollers Jahrbuch für Gesetztgebung, Verwaltung und Volkswirtschaft im Deutschen Reich,* 1900, pp. 373f.). Sombart discovered the "law of the diminishing significance of foreign trade" ("Entwickeln wir uns zum Exportindustriestaat?" *Soziale Praxis*, 1898/99, p. 633. See also the article by Max Victor, "Das sogennante Gesetz der abnehmenden Aussenhandelsbedeutung", *Weltwirtschaftliches Archiv*, Vol. 36, 1932, pp. 59f. Dietzel diagnosed a kind of neo-Smithianism, which was debated by Adolf Wagner, Rudolph Sering and others. Cf. Erwin von Beckerath, *Heinrich Dietzel als Nationalökonom und Soziologe*, Kriegsvorträge der Rheinischen Friedrich-Wilhelms-Universität (Bonn: Sheuer Verlag, 1944), Vol. 135, p. 26, n.2.

29. Schmitt, *Der Nomos der Erde*, *op.cit.*, p. 208.

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century there was a growing harmony between the political and economic interests of British imperialism and the normative rules of international law. According to the famous Wheaton-Dana formula: "The sea is *res omnium*, the common field of war as well as of commerce."[30] Schmitt distinguishes between the "Principle of the Security of the Communication Lines of the British Empire," based on the legitimacy of the *status quo*, and the original Monroe Doctrine, directed against that *status quo*. Whereas the universalism of the British Principle was the outward expression of the interests of a world empire, the universalization of the Monroe Doctrine was a falsification of a genuine *Grossraum* principle. When President Wilson declared war on January 22, 1917, "the politics of the United States turned from the soil of its homeland and entered a union with the global imperialism of the British Empire."[31] The question of whether or not this assertion manifested itself concretely can only be answered from the history of American foreign policy and imperialism.

***The Dialectic of American Foreign Policy and the Dilemma of World Order***

Imperialism and universalism are conceptual pairs, as are international law and world order. Schmitt analyzes an unresolved dialectic in both American imperialism and American universalism. He traces its source to the beginning of American foreign policy and finds its full expression in the transformation of the Monroe Doctrine into a policy of global intervention. On the one hand, he sees a liberal-economic distortion of the political resulting in the spatial chaos of international law; on the other, a democratic-political distortion of universalism resulting in *pseudo*-universalism. Nevertheless, he understands that economic imperialism is still essentially political, even as pseudo-universalism is still essentially universalistic. Concretely, political universalism is as much a fiction as "humanity" as a political subject.[32] Even as he exposes American *pseudo*-universalism, Scmitt reveals the *political* nature of the US in world affairs.

The Monroe Doctrine stopped the making or remaking of empires in the Western Hemisphere, save for that of the American empire.[33]

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30. Schmitt, *Völkerrechtliche Grossraumordnung*, *op.cit.*, p. 29.
31. *Ibid.*, p. 34.
32. Cf. Carl Schmitt, "The Legal World Revolution," in this issue.
33. See the article by Schmitt's long-time friend, Moritz Julius Bonn, "Imperialism," *Encyclopaedia of the Social Sciences*, Edited by Edwin R.A. Seligman and Alvin Johnson (New York: The MacMillan Co., 1937), Vol. 7, pp. 605-613. There is a recognizable correspondence between the views of Schmitt and Bonn on various aspects of the history of imperialism in general and American imperialism in particular, but it is beyond

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The lesson of the American Revolution for England (and all imperialist powers) was that the mother country must rely on responsible colonial government if imperial links were to be preserved, that she must forego intervention, and that financial policy and control of customs and tariffs must be entrusted to the colonists. The hope for universal free trade facilitated this change. But the so-called miracle of *imperium et libertas* failed because every young commonwealth attempted to promote its industrial development by high protective tariffs aimed chiefly at imports from the mother country.

Imperialism as a commercial policy persisted until the Manchester school attacked it. Mercantilist theory clearly reflected the twofold desire to support free trade and build an empire; it implied that trade rather than conquest is the natural source of additional wealth. The new imperialism of the late 19th century differed from the mercantilist variety. Although its chief beneficiaries were the established colonial powers, new countries entered the field: France, Italy, Germany and Japan. As for America and Russia, overland expansion had reached natural limits and become transformed into movements of conquest and annexation. Although a nation without a colonial empire was considered second-rate, the main impulse was a growing surplus of production threatened by the decline of free trade. Open or disguised political control became essential for the security of capital, which was flowing to backward countries.

The concept of "modern" or "economic" imperialism arose at the turn of the century with the Spanish-American War, the Open Door, and the Boer War. Alone among the Old World powers, Great Britain was conspicuously friendly to the US during the crisis with Spain.[34] An Anglo-American League was founded in London and an Anglo-American Committee was organized in New York. Although the idea of a

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the scope of this article to determine who influenced whom. For general reference and bibliography used in this article, see also *The Cambridge History of the British Empire*, Vol. I, *The Old Empire from the Beginnings to 1783*, Edited by J. Holland Rose, A.P. Newton, and E.A. Benians (Cambridge: At the University Press, 1929); Vol. III, *The Empire-Commonwealth, 1870-1919*, Edited by E.A. Benians, Sir James Butler, and C.E. Carrington (Cambridge: At The University Press, 1959); Parker Thomas Moon, *Imperialism and World Politics* (New York: The MacMillan Co., 1926); Richard Koebner, *Empire* (Cambridge: At The University Press, 1961); A. P. Thornton, *Imperialism in the Twentieth Century* (Minneapolis: University of Minnesota Press, 1977).

34. Joseph Chamberlain, whose theory of colonial expansion to solve the social problem influenced Lenin, declared publicly: "I even go so far as to say that, terrible as war may be, even war itself would be cheaply purchased if in a great and noble cause the Stars and Stripes and the Union Jack should wave together over an Anglo-Saxon alliance." See Thomas A. Bailey, *A Diplomatic History of the American People*, Tenth Edition (Englewood Cliffs, NJ: Prentice-Hall, 1970), pp. 465-466.

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reunification of England with the US was still too premature, Schmitt was impressed with Mahan's exploration of the possibility.[35] The American admiral did not see the reason in a common race, language or culture, as had been argued for many years, but in the need to maintain the British domination of the sea for the stability of world peace. In Mahan's view, this was only possible on an insular basis. But England had become too small: "America is the greater island, carved out of the British appropriation of the sea, and should pursue in greater manner the Anglo-American maritime domination of the world."[36]

Mahan's speculation aside, so far as "economic" imperialism was concerned the concept followed practice. Even before the Spanish-American War, the rise of American imperialism was evident in Hawaii and Samoa. The treaty with Spain (1898) gave the US sovereignty over Cuba and outright possession of the Philippines, Puerto Rico and Guam. Manila was seen as a kind of American "Hong Kong," and American commercial interests were quick to recognize the potentially vast market opening up on the Asiatic mainland in the wake of the Sino-Japanese War (1894-95). The British, who had by far the largest stake in China, twice proposed to Washington in 1898-99 a cooperative agreement to ensure equal opportunities in China — the Open Door. At first these schemes were spurned as inconsistent with the traditonal US policy of non-entanglement. But late in 1899 Secretary of State Hay sent Open Door notes to the world capitals. Only after the outbreak of the Boxer Rebellion in 1900, when the US contributed some 2500 troops to the joint expeditionary force, did he seek both to "preserve Chinese territorial and administrative" unity and to "safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire." Nevertheless, almost immediately thereafter Hay closed the door to the Philippines with American tariffs. In November 1900, at the insistence of the Navy Department, he undertook to secure from Peking a naval base and territorial concessions in southern China, until the Japanese reminded him of his recently announced guardianship of China's territorial integrity.

In little more than two years, the US emerged as a major imperialist power. As such, a man-made waterway seemed imperative if the US

35. On Alfred Thayer Mahan, see J.M. Kenworthy in *Encyclopaedia of the Social Sciences*, *op.cit.*, vol. 9, pp. 46-47. See also Mahan, *The Influence of Sea Power upon History, 1660-1783* (Boston: Little-Brown, 1890); Mahan, *The Influence of Sea Power on the French Revolution and Empire, 1793-1812*, Two Vols. (Boston: Little-Brown, 1892). Mahan's fully developed thesis appears in *The Interests of America in International Conditions* (London: S. Low Marston, 1910).

36. Schmitt, *Land und Meer*, *op.cit.*, p. 101.

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were to take full advantage of the new trade possibilities in the Pacific and unhamper its fleet for two-ocean operations. Already in February 1900 the British ambassador in Washington concluded a treaty with Hay, providing that the US could construct, own and neutralize, but not fortify, such a waterway in the Isthmus of Panama. In November 1901 the US also succeeded in acquiring a free hand to fortify the proposed canal. The way to the sea was open.

Notwithstanding all this, it was the strong and almost universal condemnation of Britain during the Boer War that started the word "imperialism" on a new continental career and led to its redefinition as "economic imperialism." This is when Hobson began to theorize imperialism as a "form" of capitalist expansion, although he was more concerned with American than British developments.[37] According to Koebner,[38] the concept of "economic imperialism" has displayed four distinct stages: 1) systematization of Hobson's ideas; 2) integration of Hobson's views into Marxist thought; 3) popularization by Marxist-Leninists, Fabians and Americans; and 4) sloganization as a powerful political weapon. Here we are concerned primarily with the third stage, following WWI, when imperialism was not only discredited as a policy but became a "hate-word of world struggle against Anglo-Saxon domination,"[39] and the fourth stage, characterized by the struggle between the US and the USSR.

During the third stage, the Germans in particular saw imperialism as

37. See Richard Koebner, "The Concept of Economic Imperialism," *The Economic History Review*, Second Series, vol. II, No. 1 (1949); Richard Koebner and Helmut Dan Schmidt, *Imperialism: The Story and Significance of a Political Word, 1840-1960* (Cambridge: At The University Press, 1965).

38. On Hobson, see H.N. Brailsford, *The Life-Work of J. A. Hobson*, L.T. Hobhouse Memorial Trust Lecture, No. 17, London University (London: Oxford University Press, 1948). See also J.A. Hobson, *The War in South Africa: Its Causes and Effects* (New York and London: MacMillan and Co. 1900); and Hobson, *The Psychology of Jingoism* (London: G. Richards, 1901). In 1902 Hobson incorporated the imperial slogan of the American election of 1900 into his theory: "The Economic Taproot of Imperialism," *Political Science Quarterly*, Vol. XXVII (1902), pp. 460-489. He connected the defects of the capitalist system — under-consumption, over-saving, and maldistribution — in his fully developed thesis: *Imperialism: A Study* (New York: J. Pott and Co., 1902). Like Marx, Hobson upheld determinism, stressed class government, condemned the accumulation of capital in the hands of a few, and endeavored to discover the potent force of economic class interests under the ideological superstructure. Lenin found Hobson best-suited to his purpose in *Imperialism, the Highest Stage of Capitalism*. His original objective was not to brand Britain and America as the major imperialist culprits, but, since he avoided mentioning Russian policy to get his pamphlet published, this was the result.

39. See A.P. Thornton, *The Imperial Idea and its Enemies: A Study in British Power* (London: MacMillan and Co./New York: St. Martin's Press, 1959).

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a calculated Anglo-Saxon political system, no doubt owing to the defeat of Germany's imperialist adventures in WWI.[40] International law, the League of Nations, and treaties between states were viewed as mere tools of imperialist rulers. In this environment Schmitt developed a thesis on American imperialism and world order distinctively his own. Whatever the apparent similarities and affinities between his analysis and ideological positions left or right, however much he shared the sentiments of Weber and others regarding the Versailles Treaty, he did not succumb either to Anglophobia or Americanophobia; neither did he ever entertain any notion of an Anglo-American conspiracy against Europe and the world.[41] He adopted the concept of "economic imperialism," but with a significant qualification, since he found it to be a characteristic holdover of the 19th century antithesis of economics and politics, of the propensity to characterize economic expansion as not *only* "*unpolitical*" *but* "*peaceful.*"

From the beginning, American imperialism was based on the presumed separation of economics and politics, which Schmitt considers the key to the problem of world order. Following Tocqueville, he recalls Washington's Farewell Address: "The great rule of conduct for us in this regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Let us stop here."[42] He finds this principle expressed in many aspects of the Monroe Doctrine: European states could carry on as much trade as possible in the Western Hemisphere, but must not do anything political; when a political question concerning trade arose, the decision belonged to the US. By the end of the 19th century the US had succeeded in substituting a liberal-democratic for the monarchic-dynastic principle of legitimacy. But between 1890 and 1939 the unsolved dilemma of isolationism and interventionism continued to be expressed in a dialectic of official political *absence* and effective economic *presence*.

The 1904 Roosevelt corollary to the Monroe Doctrine was a water-

40. On the discussion in Germany, see "Imperialismus," *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Edited by Otto Brunner, Werner Conze and Reinhart Koselleck, Vol. 3 (Stuttgart: Klett-Cotta Verlag, 1982), pp. 171-236.

41. In this connection, it should also be noted that Schmitt never viewed actual Soviet Russian designs on Europe from the perspective of a dogmatic anti-communism, but rather in the perspective of the end of the *jus publicum Europaeum* and the legacy of Tocqueville's prognosis. Neither did Schmitt adopt Hobson's clearly anti-Semitic notions about a relation between parasitic capitalism and the Jews.

42. Schmitt, "Völkerrechtliche Formen des modernen Imperialismus" (1932), *Positionen und Begriffe*, *op.cit.*, p. 162; Tocqueville, *Democracy in America*, *op.cit.*, pp. 209-212.

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shed: "Chronic wrongdoing . . . may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power."[43] Arguing further that American intervention in Europe was justified to prevent European wars from engulfing the US, Roosevelt also transgressed traditional isolationism in Morocco in 1905. In this same year, as Schmitt notes, his reaffirmation of the Open Door in China welcomed all of Asia into the "economic imperialism" of the Anglo-Saxon global system.

President Taft's Dollar Diplomacy was conceived in response to Roosevelt's "big stick," but he accepted the wider implications of Roosevelt's corollary. On December 3, 1912 he announced: "The diplomacy of the present administration . . . has been characterized as substituting dollars for bullets. It is one that appeals alike to idealistic humanitarian sentiments, to the dictates of sound policy and strategy, and to legitimate commercial aims."[44] Following this rationale, the US pressured certain Latin American governments to buy battleships from private American yards. The argument was that these battleships would enable the southern republics to uphold the Monroe Doctrine, while keeping the US armorplate industry prepared for a national emergency. The more conventional type of Dollar Diplomacy was occupied with squeezing foreign holdings out of critical Caribbean areas, while forcing Latin American governments to welcome US capital. Inducements to Wall Street were accompanied by assurances of protection of investments.

President Wilson's New Diplomacy was directed against Dollar Diplomacy. An outspoken opponent of bankers and trusts, Wilson was not predisposed to support special interests. But his views did not square with the facts of commercial and political life. In spite of the gap between his ideals and American actions, or perhaps because of this, Schmitt credits Wilson with the deeper transformation of the original meaning of the Monroe Doctrine — from a concrete *Grossraum* idea into a universal principle. In July 1917, Wilson exhorted all the peoples of the world to adopt the right of self-determination embodied in the Monroe Doctrine. At the Paris Peace Conference his Fourteen Points promoted a new universalism. Nevertheless, owing to isolationist sentiment, the US refused to enter the League of Nations

43. Bailey, *A Diplomatic History of the American People*, *op.cit.*, pp. 504f.
44. *Ibid.*, p. 529.

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unless its Charter incorporated the Monroe Doctrine — a demand less concerned with the right of self-determination than with American domination in the Western Hemisphere. As it turned out, even though Art. 21 of the Charter did incorporate the Monroe Doctrine, the US did not join the League. In Schmitt's view, Art. 21 symbolized the triumph of the Western Hemisphere over Europe.

One of the main problems of the League was that both the greatest modern powers — the US and the USSR — remained outside it (the Soviet Union joined only in September 1934). Particularly significant, however, was the relation between the League and the Western Hemisphere, which affected the relation between the League and Europe. The fact that the Charter expressed the American principle of spatial order mitigated against any specifically European (even less, any global) system of spatial order. On the one hand, the League was for all practical purposes excluded from dealing not only with relations between states in the Western Hemisphere, but also with relations between European and Central American states; on the other hand, the rights of those South and Central American states which were members of the League were equal to those of all other states, including those in Europe. The League was *absent* in America, but eighteen South and Central American states were *present* in Geneva. The US was officially *absent* but effectively *present*, because many of those states which belonged to the League were either directly dependent on or indirectly controlled by the US. Cuba, Haiti, Panama and Nicaragua were not only economically and politically dependent on the US through the Monroe Doctrine and the Caribbean Doctrine; they were also and expressly bound to the US by treaties.

While the territorial status of these client states was not changed thereby, they were spatially included in the area designated as falling within US "special interests." Schmitt viewed this situation in terms of the development of "economic imperialism": "The external void of territorial sovereignty remained uncontested, while the substantive content of this sovereignty was changed through the guarantees of the economic *Grossraum* of the controlling power. Thus evolved the modern type of treaties of intervention in international law. Here political control and domination is based on intervention, while the territorial *status quo* remains guaranteed. The controlling state has the right to decide of its own volition the grounds for intervention in the affairs of the controlled states, be it for the protection of independence or private property, the preservation of order and security, the maintenance of the legality or legitimacy of a government, or whatever. Its right of

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intervention is protected both internally and externally by support clauses, ship-landings, refueling stations, military bases, lend-leases, or other. Since the controlling state has the right to intervene through treaties and agreements, it is possible to argue that in the purest juridical sense this is no longer really a question of intervention."[45]

The maxim: "as much trade as possible, as little politics as possible" inherently expresses the domination of an economy free of the state and a free society over the state. While this did not constitute a rejection of protectionism and economic autonomy, it signified for Schmitt a means for political influence whose most important characteristic is that it bases international law on free trade and the free market as a constitutional standard. Economics in an age of industrialism and modern technology is, of course, something very different from trade in the style of the 18th century. But the separation of economics and politics made possible an all-embracing free politics which gave the US a great advantage. It could indirectly regulate, if not directly control the internal European struggle and the *status quo* or revision of territorial boundaries, so long as these decisions remained purely economic. However, this separation of economics and politics soon became precarious because all postwar European economic questions had an unmistakable political significance. The US wanted to be economically *present* and politically *absent*, but its political absence could in no way hinder the political consequences of its economic presence. It was believed that the political could be relegated to an external facade of territorial borders, that economics could be made the essential and overarching content of those borders, but at the critical moment nothing could prevent the political grouping of friend and enemy that would be decisive for the whole situation. Given the conflicting endeavors of the US and the USSR, the presumed monopoly of global peace could not succeed.[46]

Schmitt rightly understood that the problem of world disorder is at once a problem of the concept of war because the history of international law is fundamentally a history of the concept of war.[47] The

45. Schmitt, *Der Nomos der Erde*, *op.cit.*, p. 225.

46. Schmitt is here not concerned with the utopia of world government, which would mean the end of the political and imply the transformation of human nature. World order or disorder, a *nomos* of the earth or spatial chaos are concrete concepts in line with the state of nature and the nature of the political.

47. Here I rely particularly on Lothar Kotzsch, *The Concept of War in Contemporary History and International Law* (Geneva: Librairie E. Droz, 1956). Schmitt acknowledged that he had no accesss to a major library at the end of the 1940s, when he was writing *Der Nomos der Erde*. As a result, there are some minor errors and omissions in his

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development of parliamentarism during the 19th century influenced the modality of waging war in that the partition of state power among the legislative, executive and judicial branches of government served to do away with the centralization of war-making power in the majority of European states. Even more important, internationalists gradually moved toward a more general definition of war, which no longer excluded civil war and war in which one or more of the belligerents was lacking the quality of a state. With regard to non-declared war between states, the first signs emerged of a distinction between formal and material war — between the legal concept of war between two or more sovereign states, whether or not actual hostilities exist, and a clash of arms by belligerents which may not be states. By the beginning of the 20th century there arose the practice of speaking in terms of "war as defined by international law" as distinguished from other forms, such as the commercial concept of war.

Perhaps most important in the history of international law was the distinction between the Anglo-Saxon and continental concepts of war with respect to the scope and meaning of the term "enemy." Whereas the former considered every individual of the opposing state the enemy, the continental concept stemmed from Rousseau's dictum that war is only a relation between states. Already before 1914 there was a marked divergence in the theory and practice of predominantly maritime and predominantly continental countries. Based on the practice of blockade and the laws of economic warfare, the Anglo-Saxon concept of war was much broader than the continental practice of limiting warfare to the military conduct of armed hostilities. Even so, it did not in principle reject the fundamental distinction between combatants and noncombatants that would mark the transition to total war.

The turn to a discriminatory concept of war and the criminalization of the enemy that Schmitt recognized in two specific articles of the Versailles Treaty — Art. 227, which indicted the former German Kaiser, and Art. 231, containing the so-called "war guilt" clause — certainly contributed to the concept of total war. But the most important factor in the transition from enemy to foe was the infusion of ideology into politics,[48] and this was attributable less to Wilson than to Lenin,

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account. Specifically, his argument about the Western Hemisphere in general and the US in particular is too diffuse. While I have endeavored to correct his errors and omissions, I have in no way changed the conceptual line of his argument.

48. Cf. G. L. Ulmen, "Return of the Foe," and George Schwab, "Enemy or Foe: A Conflict of Modern Politics," both in this issue; see also Schmitt, 1963 "Vorwort," *Der Begriff des Politischen*, *op. cit.*, pp. 9-19; and Schmitt, *Theorie des*

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less to the US than the USSR. As for Wilson, he insisted at Versailles that the peace should be won "without victory." Despite his arrogation of such universal concepts as humanity, justice and progress, he did not translate these into a militant doctrine of action.[49]

What Schmitt properly calls to attention is the contradiction inherent in Wilson's pronouncements and American actions — the contradiction between traditionalism and universalism, the secular concept of politics and the ideological requirements of imperialism. Indicative was the fact that the US refused to ratify the Versailles Treaty. While it was the British who inserted the word "aggression" into that treaty,[50] American delegates to the Paris Peace Conference were among the most vocal in speaking of a "war of aggression." They did not specifically declare war an "illegal act." But they did condemn the August 1914 war as a "crime against humanity," which at least implied the abandonment of the concept of *justus hostis* and the revival of the concept of *justa causa*. Nevertheless, the "war guilt" clause was placed not under "Penalties" but "Reparations," i.e., it was couched more in economic than political terms. Whatever the precise balance of the British and the Americans in this development, it was an outgrowth of the Anglo-Saxon concept of war.

The condemnation of war that the US formulated in the Kellogg Pact had an ambiguous relation to the League Charter. It signaled for Schmitt the ultimate triumph of the Monroe Doctrine over the League, which already expressed American principles and manifested American policy in that the ultimate decision concerning the possibility of a world war lay in the hands of the US rather than in those of the two dominant European powers or in the combined powers of the League. The Kellogg Pact "condemned" war, but did not either "outlaw" or "abolish" it. Specifically, the Pact condemned war as "an instrument of national policy." The result, said Schmitt, was that war as an instrument of *international* policy was still allowed, since imperialism never pursues national wars, only "just wars" to serve an international purpose. The US adopted the same posture with respect to the Kellogg Pact as to the Monroe Doctrine: It alone could decide what constitutes a "just war," what constitutes a "peaceful means" of maintaining order

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*Partisanen*, *op. cit.*, pp. 16-20..

49. Cf. George Schwab, "Ideology: Reality or Rhetoric?" *Ideology and Foreign Policy: A Global Perspective*, Edited with an Introduction by Schwab (New York: Irvington Publishers, 1981), pp. 143ff.

50. See Martin Gilbert, *The Roots of Appeasement* (New York, Toronto and London: New American Library, 1966), pp. 22ff.

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and security, of protecting private property, of pacifying the earth.

For Schmitt, the last and most decisive question of international law and world order — a new concept of war — could not be separated from the concept of neutrality. Whereas neutrality was formerly a symbol of peace, it now became a symbol of war. Paralleling Wilson's dilemma of isolation or intervention prior to 1917, FDR was caught on the horns of the same dilemma on October 5, 1937, when he said that international anarchy and lawlessness could not be overcome through isolation and neutrality. Nevertheless, the official US declaration of neutrality on September 5, 1939 was still couched in terms of the traditional concept — the strictest non-partisanship and equal friendship with all warring parties. Then, on March 31, 1941, Attorney General Jackson read a statement openly acknowledging the death of the old isolationism and neutrality: "I do not deny that in the 19th century certain rules of neutrality were developed, based on the idea of neutrality, and that these rules have been supplemented by various Hague conventions. The application of these rules has become obsolete. Experiences since the World War have demonstrated their invalidity. The fundamental principles of the 19th century, according to which all warring parties must be handled equally, have been swept away by the consent of the League of Nations to the principle of sanctions against the aggressors, through the Kellogg-Briand Pact, and the Argentinian declaration outlawing war. We must return to *earlier* and *healthier* conceptions."[51] As Schmitt notes, what Jackson meant by *earlier* and *healthier* conceptions was precisely those predating the *jus publicum Europaeum* — those based on the *justa causa*.[52]

Perhaps most indicative of the new situation was the Pan-American Conference in Panama (October 2, 1939), which issued a General Declaration of Neutrality of the American Republics with an announcement that the waters surrounding the Western Hemisphere for a distance of 300 miles from shore and as far north as Canada constituted "sea safety zones" to be kept free from hostile acts by non-American

51. Schmitt, *Der Nomos der Erde*, *op.cit.*, pp. 237f.

52. Specifically, these conceptions were those of Vitoria. Indicative of Schmitt's knowledge of American jurisprudence, he notes that the most modern chapter in the history of the appreciation of the work of this 16th century theologian and jurist was written by James Brown Scott, founder and president of the American Institute of International Law and the American Society for International Law, secretary of the Carnegie Endowment for International Peace and director of its international law division. See J.B. Scott, *The Spanish Origin of International Law: Lectures on Francisco de Vitoria and Francisco Suarez* (Washington, DC: Georgetown University School of Foreign Service, 1928); see also Scott's preface to *Francisci de Victoria de indis et de ivri belli relectiones*, Edited by Ernest Nys (Washington, DC: The Carnegie Institution, 1917).

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belligerent nations.[53] Schmitt considered this Panama Declaration critical to the spatial problem of modern international law. Not only did it constitute for him a quantitative expansion of the Monroe Doctrine; it was as well a qualitative transformation in that it created a *Grossraum* of both land *and* sea, whereby the necessity of global linear thinking and modern economic *Grossräume* became increasingly sharper and clearer.

As Schmitt saw it, since the beginning of the modern imperialist era the Western Hemisphere was faced with an alternative between a plurality of *Grossräume* and a global claim to world leadership, between polopoly and monopoly. For Schmitt, these are not just general antagonisms or polarities, not mere contrasts and tensions endemic to every great world politics; they are contradictions stemming from the unsolved problematic of a spatial development which demands either the transition to a world order of *Grossräume* contained in a juridically formal relation or the transition to a global civil war. He looked for the key to the coexistence of independent *Grossräume* in the practice of recognition, because the structural transformation of the spatial order of international law has been reflected in the conceptual transformation of recognition throughout centuries past and particularly in the last century.

In the international law of the *jus publicum Europaeum* the recognition of one state or government by another was based on equality and reciprocity and, in the case of war, on the concept of *justus hostis*. Every recognition in international law was fundamentally an expression of the fact that the state in question had a legitimate spatial dimension and belonged to a recognized spatial order. In times of peace and stability, this order established social customs and legal institutions; when the total structure changed, *de jure* recognition turned into *de facto* recognition and the dilemma of isolation and intervention appeared on a global scale. Schmitt contends that American statesmen and jurists broadened recognition into a general elastic concept applicable to every subject, situation, war and territorial change. He chose two particularly telling examples to illustrate his point — the recognition of insurgents as belligerents, and the recognition of new governments. Both are instructive with respect to the question of spatial order, because the point at which war degenerates into a "just war" is that point at which it becomes a global civil war.

In the European wars of the 18th and 19th centuries, the legal institution of the recognition of insurgents as belligerents stemmed from

53. *Cambio de estructura del Derecho Internacional*, *op.cit.*, pp. 11f.

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the concept of neutrality and the idea of non-intervention. Until the two world wars, US conceptions (irrespective of the colonial and Indian wars) were essentially derived from the two great civil wars: the War of Independence and the War Between the States. In both, but above all in the latter, the question of recognition of insurgents and parties-in-war was uppermost. In 1816 the US recognized as belligerents the South and Central American revolutionaries in their struggle against the legally-established Spanish and Portuguese governments. In 1822 President Monroe recognized South American belligerents as independent states and, with the proclamation of his great doctrine in 1823, he affirmed such recognition as a perfect expression of US "neutrality."

The outbreak of the War Between the States in 1861 revealed a conflict when the insurgent Southern states were recognized as parties-in-war by England and France. Because this conflict concerned the limits of Eurocentric international law and the relation of two spatial spheres on opposite sides of the global line of the Western Hemisphere, Schmitt found it significant and valuable for a consideration of the new spatial problem of the earth. The English and French governments could refer to generally-recognized opinion and even to the famous declaration of neutrality (with respect to France and the coalition of England and Austria) made by Washington during the Revolutionary War, while the essential argument of the US government hinged on the spatial standpoint of the Western Hemisphere and the Monroe Doctrine. When English jurists spoke of their "neutrality" with respect to both parties in a civil war, they were basing themselves on the non-discriminatory concept of war. But the US well understood that practically, morally and juridically a recognition of insurgents as belligerents is something quite other than a purely factual or declarative position, because every recognition by a great power of the insurgents of another state as parties-in-war immediately increases the juridical and military potential for struggle. The US insisted that the armed insurrection in the South by no means constituted a state-of-war impairing the sovereignty of the American government, creating belligerent sections, or entitling foreign states to intervene or to act as "neutrals" between the North and the South. It based its argument on the notion that the legal position of a state with respect to the internal situation of another state can constitute an illegal intervention according to international law.

Until the end of the 19th century, recognition was still considered part of belonging to the European family of nations, as a constituted act of Eurocentric international law. Once the concrete order of the *jus*

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*publicum Europaeum* was lost, so also was the consciousness of the constituting character of that community. The question of recognition proved crucial in the search for a new world order in the contradictory situation that developed between 1917 and 1924 with respect to the new Soviet Russian government. Nevertheless, the extreme antithesis of non-intervention and intervention with respect to the recognition of new governments appeared so unexpectedly and clearly on American soil that, also in this case, the Western Hemisphere previewed the problem. According to the Tobar Doctrine, based on a 1907 agreement, only those governments should be recognized which are "legal" in the sense of a "democratic" constitution. In practice, what was meant concretely by "legal" and "democratic" was decided by the US, which defined, interpreted and sanctioned these terms. In Schmitt's estimation, such a doctrine had a clearly interventionist character. It meant that the US could effectively control every constitutional and governmental change in every country in the Western Hemisphere.

Once Wilson raised this doctrine to a principle of global interventionism, it concerned every state and government in the world. Following the collapse of the *jus publicum Europaeum*, interventionism developed as a typical and specific means of a general concept of recognition (and nonrecognition): a legal sanction (or nonsanction) with respect to every territorial or governmental change. In the Stimson Doctrine (1932), juridically based on the Kellogg Pact, the US reiterated the right to deny recognition to any state or government anywhere in the world that did not come to power through "legitimate" means. Schmitt draws a parallel between assertions made by Secretary of State Seward in 1861 and a speech by Secretary of State Stimson to West Point cadets on June 9, 1941. Stimson said that the world was not then greater than at the start of the War Between the States, when already the US had become too small for a division between North and South. This was for Schmitt already "a significant indication of the problem of the new *nomos* of the earth, especially when one considers our reference to the aphorism: *cuius regio, eius economia* and its most modern inversion: *cuius economia, eius regio*."[54]

### *Beyond Economic Imperialism: The Tyranny of Values*

The concept of "economic imperialism" has it own iconography, which allows its own iconoclasm. The iconography is one of values. Industrialization and technological development have made *value* an

54. Schmitt, *Der Nomos der Erde*, *op.cit.*, p. 285.

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essentially economic category. As Schmitt has it, both the term and the concept of value have become generally economized and commercialized. This process is the result not only of capitalism but also of socialism, even of communism. From both sides of the global political spectrum, the word "value" is either consciously or unconsciously projected into the economic sphere. From an economic standpoint, all higher — extra-economic — values appear only as superstructure. It is precisely this superstructure which exposes the iconoclasm of "economic imperialism."

The fourth stage in the history of the concept of "economic imperialism" has revealed contradictions inherent in the iconographies of both the US and the USSR. On the Russian side, the Stalin-Tito and Sino-Soviet splits were the first in a series of global developments demonstrating the pseudo-universalism of communism. Perhaps even more indicative was that the beginning of WWII launched communist territorial and military imperialism (the Nazi-Soviet Pact, the USSR in Eastern Europe, the Far East, and now Afghanistan, China in Tibet, Vietnam in Cambodia, etc.) even as its conclusion marked the end of noncommunist territorial and military imperialism (the German and Japanese Empires were gone, the British and French Empires were soon to follow). As for the American Empire, from the freeing of the Philippines to the recent signing of the Panama Treaty relinquishing sovereignty over the Canal it has been in retreat. Even the Western Hemisphere and the Monroe Doctrine are in shambles. Vietnam and Nicaragua are evidence of the struggle against communist ideological imperialism, even Soviet interventionism, but anticommunism is not the last resort of American imperialism.

The iconographic struggle with the USSR at once complicates and intensifies the self-referential factors of American foreign policy. From *Grossraum* to universalism these factors have been decisive. In other words, "economic imperialism" is still "modern," even more "modern," because it has outlived US territorial imperialism, whatever vestiges still remain. Seen from another perspective, American imperialism has developed in accordance with changes in economy and technology, whereby it has reached a new stage requiring new and different forms of domination. As Schmitt would say, land appropriation has given way to sea appropriation and, more specifically, to industrial appropriation (Schmitt even speaks of the appropriation of outer space). In this process, it is clear that "economic imperialism" has also outlived (or better: matured!) the dialectic of economic *presence* and political *absence*, i.e., the liberal separation of economics and politics has

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shown itself a fact based on a fiction. As Schmitt affirmed in answer to the contention that destiny today is not politics but economics: "It would be more exact to say that politics continues to remain the destiny, but what has occurred is that economics has become political and thereby the destiny."[55]

"Economic imperialism" has not and will not outlive (or mature) the dialectic of isolationism and interventionism, however, because imperialism cannot be separated from universalism, or rather: pseudo-universalism. Just as the US in the 19th century drew a global line separating the Western Hemisphere from Europe, so after WWII it drew a global line separating the noncommunist from the communist world. This policy of "containment" was, in a very real sense, a new form of isolationism — a global isolationism with the specific purpose of excluding Soviet intervention. While this urge to isolation has remained, it is linked with US global intervention. As in the case of the Monroe Doctrine, legitimate defense requirements have been complicated by economic and other motives. It is utopian to presume that this could be otherwise, since iconography has its own rationale and agenda.

Perhaps the greatest change in American foreign policy during WWII was the signing of the UN Declaration. Unlike the case of the ill-fated World Court of the League, the US also voted to adhere to the new International Court of Justice, although it exempted from "compulsory jurisdiction" all disputes involving domestic affairs and reserved the right to be the sole judge of what is "domestic." Even so, the UN, to say nothing of the behavior of the US and the USSR in that world organization, has itself demonstrated the fiction of a "patriotism of humanity." Even though both superpowers belong to the UN, no new *nomos* of the earth has been or will be achieved because spatial chaos is the counterpart of universalism: pseudo-universalism. By the same token, there can be no *genuine* and *binding* international law without world order. Schmitt's critique of the pseudo-universalism of the League is equally applicable to its successor.

If pseudo-universalism is coincident with and even necessary to "economic imperialism," what then is beyond "economic imperialism?" By beyond is meant not *after* but *stronger than* "economic imperialism." Here Schmitt speaks of an influence much more subtle than that of overwhelming power: "It is a phenomenon of world-historical significance to operate with broad concepts, a special kind of elasticity, a

55. Carl Schmitt, *The Concept of the Political*, Translation, Introduction, and Notes by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976), p. 78.

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special kind of ability to command the respect of the peoples of the world with such concepts. The question always arises as to who will interpret, define and apply decisive political concepts; who will concretely decide what is peace, disarmament, intervention, public order and security? It is one of the most important developments in the general legal and intellectual life of humanity that he who has true power has also the right to determine the meaning of concepts and words. *Caesar dominus est supra grammaticam*: Caesar is lord also of grammar. Imperialism creates its own concepts. But a false normativism and formalism leads only to the conclusion that no one knows what is war and what is peace. Again, I must caution against any misunderstanding, because we are dealing here with matters that one could easily make arbitrary. It is a true expression of political power when a great people determines the manner and even the way of thinking, the vocabularly, the terminology and the concepts of other peoples. A historically-meaningful imperialism is not only or essentially military and maritime panoply, not only economic and financial prosperity; it is also this ability to determine in and of itself the content of political and legal concepts. This side of imperialism (I speak here not only of American imperialism) is . . . perhaps more dangerous than military oppression and economic exploitation. A people is first conquered when it acquiesces to a foreign vocabulary, a foreign conception of what is law, especially international law."[56]

The question of American imperialism and international law is here already one that synthesizes the dialectic between economics and politics, even as it transcends the boundaries of its own frame of reference. The tyranny of concepts discloses the essential nature of economic or any other type of imperialism as a "tyranny of values."[57] Whether something *has* value and how much, whether something *is* valued and how much, can only be determined from a fixed standpoint or viewpoint. All values, economic or any other, exist in a referential — a self-referential — system. Every value is such according to its place and

56. Schmitt, "Völkerrechtliche Formen des modernen Imperialismus" (1932), *Positionen und Begriffe*, *op.cit.*, p. 179.

57. Carl Schmitt, "Die Tyrannei der Werte," in Carl Schmitt, Eberhard Jüngel, and Sepp Schelz, *Die Tyrannei der Werte*, Edited by Sepp Schelz (Hamburg: Lutherisches Verlagshaus, 1979), pp. 9-45. The term "tyranny of values" was coined by Nicolai Hartmann: *Ethik* (Berlin and Leipzig: Walter de Gruyter, 1926 and 1935); English Translation by Stanton Colt, *Ethics*, Three Vols. (London: Allen and Unwin, 1932). Schmitt adopted Hartmann's term but utilizes it in a much wider — theological and philosophical, juridical and political — context. The present context in no way exhausts the manifold ramifications of his discussion.

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position. This is true also of the highest value, be it the individual or humanity, freedom or classless society, God or communism. Given the typical *point*edness of values, the term "attack point" expresses the potential aggressiveness immanent and imminent in every value criterion.[58] Once this "attack point" comes into play, the illusion of value neutrality vanishes. Inherent in every set of values is the "other side." Owing to the ambivalence of values, one set will always and necessarily be opposed to another. The tolerance and apparent neutrality of interchangeable standpoints and viewpoints immediately turns into the opposite — into hostility: a friend-foe relation — as soon as values are taken seriously in a concrete situation. For Schmitt, the expansion of values is as irresistible as the struggle of evaluators, devaluators and revaluators is inevitable.

The "tyranny of values" is for Schmitt the key to understanding the continuing struggle and even intensification of differing beliefs and interests. It explains the return to the concept of *justa causa* and even the transition to total war, whereby the struggle against the foe becomes at once a struggle *against* an "unvalue" and *for* the higher or highest value. What has no value has no right, whereas no price is too high to pay for the highest value. All categories of the concept of war in the *jus publicum Europaeum* fell victim first to the fiction of value neutrality and then to the fact of the "tyranny of values."

*Ne simus faciles in verbis*: Schmitt cautions that we must not be flippant in our use of words. The same holds true for concepts, such as "economic imperialism" and "tyranny of values." But it is not flippant to draw a parallel between "economic imperialism" and the "tyranny of values," not the least because economic values are predominant. The correlation opens a new vista beyond "economic imperialism" — the whole question of cultural (specifically American) imperialism. The step from the "tyranny of values" to the tyranny of culture is one from jurisprudence to critical theory. But this is a step beyond Carl Schmitt.

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58. According to Schmitt, the question of values always returns to the antithesis of formal and material values and must always have reference to the two representative figures of this antithesis: Max Weber and Max Scheler. The term "attack point" stems from Weber, whom Schmitt credits with the most significant understanding of the modern problem of values.

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# *The Legal World Revolution**

## Carl Schmitt

***The Modern Need for State Legality***

Even the thinking of professional revolutionaries progresses, as evidenced today in *legal* revolution. According to the German constitutional jurist, Rudolf Smend, who died in 1975, the German people suffer from a "touching need for legality." Smend came to this conclusion not only as historian of the Supreme Court of the German Reich, but also as observer of the positivistic normativism of his own time. Recently an old and experienced Spanish revolutionary, Santiago Carrillo, put forward the same notion in a book about *Eurocommunism and the State*.[1] Although his "touching need for legality" is politically of a different nature, Carrillo is expressly convinced that the more violent methods of Lenin's and Trotsky's *illegal* revolution of October 1917 are now antiquated, that they were only justifiable in the instance of an agrarian (peasant) society breaking through to a modern (industrial) society. For a communist revolution, they were legitimate but not legal. Today, however, such methods are out of date, since it is now a matter of state power in industrially developed societies. They are no longer suitable models for a communist revolution and must be replaced by peaceful, i.e., legal methods.

Carrillo knows how to make good use of the experiences of Mussolini's fascism and Hitler's Nazism. He uses the word "State" a hundred times with positive emphasis and always capitalizes it: *Estado*. The state is certainly no longer dead, but more alive and necessary than ever: it is specifically the bearer of legality, which brings about this miracle of a peaceful revolution. The revolution in turn legitimizes the state as the reward for bringing about a legal revolution. The legal revolution becomes permanent; the permanent *state* revolution becomes legal.

Our analysis of the possibilities of a legal world revolution is about the *legality* — not the legitimacy — of a world revolution. For the purpose of this investigation, it is useful to define these two concepts more precisely.

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* Originally published as "Die Legale Weltrevolution: Politischer Mehrwert als Prämie auf juridische Legalität," *Der Staat*, No. 3 (1978), pp. 321-339. Trans. by G. L. Ulmen.

1. Santiago Carrillo, *Eurocomunismo y Estado: El "eurocomunismo" como modelo revolucionario idóneo en los países capitalistas desarrollados* (Barcelona: Editorial Crítica, 1977). See Santiago Carrillo, *Eurocommunism and the State* (Westport, Conn.: L. Hill, 1978).



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***Legality, Legitimacy and Super-Legality***

*Legality* means obedience and discipline. Its sense and purpose is a "chance to compel obedience" (Max Weber).[2] It is the functional mode of a modern industrial or state bureaucracy. The expression, "formula of obedience," is from Goethe's comments on Schiller's *Wallenstein*. Goethe uses this formulation to explain the conduct of Wallenstein's generals, who find themselves in a conflict of loyalties between the emperor and his "Supreme General of the Imperial Army" and ultimately decide *for* the emperor and against Wallenstein. The oath (to the emperor) as "the formula of obedience" was decisive. What is meant by "rationalism" today is nothing more than the reduction of the implementation of planning to calculability, which has its equivalent in the verse of a popular song: If only I have obedience, I don't need loyalty.

*State* legality concerns the unavoidable political premiums of the legal holding of state power: *obéissance préalable* for all laws and acts of state; management of the military, police and finance, administration and justice; distribution of national wealth, offices, employment and subsidies; interpretation of the numerous new situations which arise constantly from rapid progress in science, technology and industry. For this reason, any state power with the courage of its political convictions has astonishing possibilities to create for itself new situations, new and consequential *faits accomplis*. State legality creates for itself a political surplus value: it is, as Karl Marx said about capital, "a value that breeds surplus value."

*Legitimacy* means the formula of moral, ideological or philosophical identity and self-image of a political system. Since the onset of written constitutions, the constitutional legislator has sought to sanction his identity through solemn declarations (such as an appeal to God), moral, philosophical or ideological formulas, and to anchor this identity in preambles. An excellent Heidelberg dissertation by the Greek jurist Ion Contiades offers a good example of the modern state's need for this kind of prestige, by which it seeks to legitimize itself.[3] The Constitution of the Turkish Republic, dated May 27, 1961, deserves to be

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2. Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*, Fourth, Newly Revised Edition by Johannes Winckelmann (Tübingen: J.C.B. Mohr [Paul Siebeck], 1956), Vol. I, p. 122f. In its scientific claim, Max Weber's definition of *Gehorsamerzwingungschance* means a value-free reduction (in the sense of neo-Kantian epistemology): three equally value-free terms — *Gerhorsam* (protection), *Erzwingung* (compulsion) and *Chance* (chance) are compressed into one concept.

3. Ion Contiades, "Verfassungsgesetzliche Staatsstrukturbeziehungen," *Res publica: Beiträge zum Öffentlichen Recht*, Vol. 16 (Stuttgart, 1977).

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quoted, because it is full of such legitimations: "The Turkish State is a Republic. The Turkish Republic is based on human rights and those fundamental principles of a national, democratic, secular and social state set down in the preamble."[4]

This example of a preliminary constitutional declaration presents a type of contemporary constitutionalism widespread throughout the world. A state which professes to embody these attributes presumes legitimacy. Legitimacy ceased to be the specific attribute of hereditary monarchy with President Woodrow Wilson, the founder of the League of Nations. Dynastic legitimacy became democratic legitimacy, whereby the corresponding antagonisms were transformed into democratic attributes. Liberal, i.e., capitalist democracy is now the enemy of socialist, i.e., communist democracy and vice-versa.

What then is *super-legality*? The term means strengthened validity of certain norms as opposed to "simple" (or "regular"), i.e., normal norms. Typical are procedural norms, which are designed to restrict a modification or abolition of norms (by a qualified majority or the distribution of procedures among various authorities). The primary purpose of such a complication of legislative procedure in modern, pluralistic democracies is to hinder any rapid changes of government with small, unstable majorities and coalitions, to create stable majorities capable of governing by a margin greater than fifty percent.

The concept and the term "super-legality" stem from Maurice Hauriou — from his life-long experience with the theory and practice of the many French constitutions from 1789 to 1923 and the stable, traditional administration of the French nation and state. It is noteworthy that he discovered the concept only after the experiences of WWI and the postwar years, and that he strongly emphasizes this fact.[5] Hauriou rejected the idea of any institutionalized control of "super-legality," in particular control of the constitutionality of laws by a supreme court. On this point he disavowed, if not also refuted, the constitutional development of many modern industrial states.

In my 1932 book, *Legalität und Legitimität*, I attempted to interpret the Weimar Constitution in terms of constitutionally-changed law (*Gesetz*) and simple or regular law. In the chaotic situation of the fall and winter of 1932/33, I contended it was unconstitutional to appoint either a Nazi

4. For an illustration of the practical implementation of the constitution, see Ernst E. Hirsch, *Menschenrechte und Grundfreiheiten im Ausnahmezustand: Eine Fallstudie über die Tätigkeit und die Agitation "strikt unpolitischer" internationaler Organisationen* (Berlin: Duncker & Humblot, 1974).

5. Maurice Hauriou, *Précis de droit constitutionnel* (Paris: L. Tennin, 1923), p. 379.

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or a Communist chancellor and hand him the political premiums of the legal holding of power (such as those contained in Art. 48). The decisive statement reads: "I share Hauriou's opinion that every constitution contains certain fundamental 'principles' that belong to the unalterable 'constitutional system' (as Carl Bilfinger called it), and that the sense of the constitution with respect to revisions is not to allow a procedure to set aside the system of order established by the constitution. If a constitution foresees the possibility of constitutional revisions, it does not thereby inadvertently provide a legal means for the abolition of its own legality, still less the legitimate means for the destruction of its own legitimacy."[6]

Super-legality is a specific concept of constitutional jurisprudence. However, the term uniquely lends itself to political (that is, polemical) applications and interpolations. Word constructions with *super* promote such usages. Legitimacy then appears as a type of higher legality, whereby it also offers the chance to compel obedience. This is precisely what the liberal Hauriou sought to prevent. If a superior constitutional authority becomes the supreme normative instance in a hierarchy of norms and "values," then this institutionalized supreme court becomes the "supreme legislator."[7] *Progress* in the sense of accelerated scientific, technical and industrial development thereby also can become an all-out global legitimation of opposing political means and ends. Then every rightist or leftist party program can legalize its basic values — can create the political chance to compel obedience to the state. That would constitute the most incalculable of all premiums of the legal holding of power.

### *Ideologies of Progress as Forces of Super-Legality*

Today the theory and practice of a world revolution are legitimized by ideologies of progress. The idea of technical and economic progress, which is global in its immanent functionality, is particularly important for industrially-developed societies. François Perroux speaks of a way to the universal unity of humanity.[8] The "revolution at work in the world" seeks a way to this goal; but it still labors with the imprecise concept of "economy"; it confuses the performance of Europeans and the West in general with the economic progress of humanity.

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6. Carl Schmitt, *Legalität und Legitimität*, Second Edition (Berlin: Duncker & Humblot, 1968), p. 61.
7. Robert Leicht, *Süddeutsche Zeitung* (April 19, 1978).
8. François Perroux, *L'économie du XXe siècle*, Third Edition (Paris: Presses Universitaire de France, 1969), p. 390.

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Perroux calls this a grand illusion, and contrasts this vision with an economic progress which differs from technical and commercial progress and transforms a *miserly economy* (with its egoism of individuals, nations, classes and races) into an *economy of the whole person and all people*.

Our scientific intention here is neither to offer a critique of modern industrial society in general, nor a principled negation of an *avaricious economy* as opposed to an affluent society. We are also not concerned here with the irksome, injurious and dangerous consequences of an unfettered scientific, technical and industrial progress, of environmental pollution, detriments to health, etc. — the social reverse of a steadily-increasing standard of living. In short, we will ignore all that is usually meant by the shoddy euphemism of "side effects" — all that has become (after the scathing report by the Club of Rome, 1975) a matter of general public discussion.[9] Economic progress appears in a syndrome of scientific, technical and industrial progress. *Global* progress confronts a growing number of specific types of progress. In Perroux's book the problem is even specifically presented as the conclusion of his theory of the 19th century. The last word of the book is directed against the adversaries *of* progress. The progress of the human species embraces many different types of progress. A precise conceptual definition of progress has become unavoidable. "The legitimacy and opportunity of a rigorous analysis and precise characterization of progress" is obvious.[10]

The numbers and types of progress are constantly increasing: scientific, technical, economic and commercial progress appear to promote the social progress of industrial society; moral, ethical, cultural and humanitarian progress both promote and accompany a different type of

9. I consider the term "side effects" to be a misleading and unscientific trivialization, serving to evade the problem of the consequences of scientific progress. Modern science is axiologically neutral, pure and value-free (*wertfrei*). The German word for value (*Wert*) stems from the vocabulary of the exponents of axiology, for whom value-freedom (*Wertfreiheit*) is the highest freedom and the highest value. It is not permissible to isolate value-free science and value-neutral technology from their results in such a way that the results of the syndrome of science and technology also profit from the privilege of value-freedom and value-neutrality. If the industrial products of such a syndrome are judged by completely other standards than good and evil, desirable or undesirable, and if then the evil and undesirable results are considered mere side effects, that is a scientifically-inadmissible evasion. Environmental pollution is still pollution, even if great physicists and Nobel Prize winners have contributed to it. This clear insight is found in a remarkable review of a book by Rainer Specht, *Innovation und Folgelast: Beispiele aus der neueren Philosophie- und Wissen- schaftsgeschichte*, in the series *Problemata* (Stuttgart-Bad Cannstatt: Verlag Frommann-Holzboog, 1972), Nr. 12.

10. François Perroux, *Aliénation et société industrielle* (Paris: Castermann, 1970), NRF Idées Nr. 206, p. 180.

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progress. Singly or in changing clusters, various types of progress form sometimes friendly, sometimes hostile or neutral links; they can either be absolute or demonstrate the ability to compromise, move slower or faster, run parallel or intersect and disturb each other. Finally, it is also conceivable that even their colliding and crossing, their "declination," might be necessary for the creation of a universal unity of the human species — might be something analogous to the declination of atoms in the theory of Democritus. In Karl Marx' doctoral dissertion on Democritus, he quotes the following verse from Lucretius: "*quod nisi declinare solerent omnia deorsum/. . . caderent per inane profundum.*"[11]

In our consideration of the possibility of a legal world revolution, we have yet to mention another type of progress — *political* progress. As a great parole of legitimation, it is part of the propaganda of international parties. Since the October Revolution of 1917, Soviet power has sought to further the political unity of the world and the human race. From the beginning, the Russian Revolution was seen as the beginning of a world revolution. It abolished the constitutions of the Tsarist empire and the Kerensky regime, as well as the elected Russian National Assembly, and set up a "dictatorship of the proletariat." That was illegal from the standpoint of the established political norms, which were essentially based on the Western theory of a "constituting power." An *internal political* revolution was thus "englobed" within the horizon of a world revolution.

I have borrowed the term "englobe" from Perroux, who has described the phenomenon of "englobement" of national and international, state and supra-state developments. Perroux is well aware of the fact that a socialization of the state can only be accomplished on its own territory. Despite all capitalist and socialist international developments, social struggles have thus far emerged in isolation in individual states and have created different social institutions and organizations. With respect to socialization in individual states, this is also true for capitalist concerns and installations. The extraordinarily large premiums of the legal power of the *status quo*, the stabilizing effects of every legalization belong to those parties and organizations in power *in individual states* at the moment of legalization. Not only is this obvious, it also demonstrates the degree to which the legality of a world revolution

11. [Tr.] "If they do not so deviate . . . , they sink into the emptiness of infinity." See Karl Marx, "Hefte zur epikureischen, stoischen und skeptischen Philosophie," Vierter Heft, Karl Marx/Friedrich Engels, *Werke*, Ergänzungsband (Berlin: Dietz Verlag, 1968), Part I, pp. 166-167.

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remains a question of the plurality of legalities within individual states.[12]

Perroux speaks of an *appareil de production* [apparatus of production] and of the rewards of such an apparatus. For the discussion in Germany I have suggested the word *Industrienahme* [appropriation of industry], based on a formula from the German Reformation: *cuius regio, eius religio*. In the 17th century this amounted to a way out of the confessional civil wars in the form of an *itio in partes*. The lord of the land determined the faith of the people. This political practice explains both the national unity of France as a state and the national fragmentation of the German Reich into a few large and many smaller states. The lord of the land, analogous to the lord of the manor, decided what law and religious belief would be. According to this principle, individual German states and principalities opted for Rome, Wittenberg or Geneva. The most austere parity was the basic norm.

In a period of rapid industrialization, such theological alternatives as Catholicism, Lutheranism or Calvinism are no longer the option. Today it is a question of finding a political system of society adequate to scientific, technical and industrial development: a liberal-capitalist, socialist-communist or liberal-socialist system with its own methods for accelerating (or, if necessary, retarding) industrial progress. The industrial world is still divided into more or less independent states, whereby state and nation are not always congruent. The question is determined by the specific economic-industrial structure. Instead of the now obsolete religious-theological-confessional question, there is the adage: *cuius industria, eius regio* or *cuius regio, eius industria*, because industrial progress has its own spatial concept. Agrarian culture derived its categories from the land: its conquests were *Landnahmen* [land appropriations], because land was its essential goal. In the 17th and 18th centuries, England — the originator of modern industrialization — took the step to a maritime existence and dominated the "free" sea ("free," because it was not bound to the land): it thereby achieved a *Seenahme* [sea appropriation]. This stage was followed by the present appropriations of industry. Only a large industrial sphere allows the possibility of a *Weltraumnahme* [global appropriation].[13]

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12. François Perroux, *Masse et Classe* (Paris: Castermann, 1972), Collection O. M., Nr. 22, pp. 161-162.

13. Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*, Second Edition (Berlin: Duncker & Humblot, 1974), pp. 175, 183, 207, 216-217 and 229. In all decisive points with respect to the development of large industrial and economic spheres, I rely on Hauriou. See also my essay, "Nehmen/Teilen/Weiden: Ein Versuch, die Grundfragen jeder Sozial- und Wirtschaftsordnung vom Nomos her richtig zu stellen" (1953), republished in Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren*

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It is possible to conceive of the political unity of humanity through the victory of one industrial superpower over the other or through the union of both with the goal of politically subjugating the total industrial power of the earth. That would be a *planetary appropriation of industry*. It would differ from the old methods of conquest — land and sea appropriation — only in being more intensively aggressive and of greater destructive potential in terms of the means of power utilized. This emphasizes the gap between ethical and moral as opposed to industrial and technical progress. The day *world politics* comes to the earth, it will be transformed into a *world police power*. That is a dubious progress! From an operative viewpoint, legality — strategic or tactical — becomes a political and practical problem of the first order. Industrial society is bound to a rationalization which includes the transformation of law into legality. Considering its stability and development, it is extremely sensitive to disturbances, violent interruptions and even sabotage. Whoever works within the law is no disturber, no aggressor, no saboteur. Legality proves to be an ineluctable method of revolutionary change.

Notwithstanding the worldwide proliferation of modern ideologies of progress, today all approaches to a legal world revolution lead to the state. This is clearly understood by Carrillo. Progress toward world political unity cannot avoid the enormous possibilities of state legislation. Even so, a professional revolutionary will always have to deal with the bottleneck of constitutional state legality so long as he cannot change it. The trend to supra-state spheres of industrial development has thus far not led to world political unity, but rather to the establishment of three *Grossräume*: the USA, the USSR, and China. Nevertheless, only the two nuclear superpowers are industrially-developed *Grossräume* which, being politically established and respected as such, do not allow political intervention by other powers. World politics has become thereby a world balance of power. The political bottleneck that progress confronts *within* such *Grossräume* is overcome in the same way as in a federal state or confederation of states.

There is, however, a third sphere of so-called non-aligned states in which there is still a certain political freedom of movement, in which states still have their own politics and even the possibility of waging wars, such as the Vietnam War or the war between Israel and the Arab states. Since Yalta (1945) this third sphere has become an area of conflict

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*1924-1954: Materialien zu einer Verfassungslehre*, Second Edition (Berlin: Duncker & Humblot, 1973), pp. 489-504.

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between competing political and military interventions of the three established and recognized *Grossräume*. A state seeking to resist the influence of supra-state powers can constitutionally narrow the bottleneck. Internationally oriented or directed radical parties have greater opportunities to make inroads in parliamentary states because the simple majority of 51% is enough to pass constitutional legislation. Structural changes in the constitution thus become easier not only for progressive but also for reactionary laws. In any case, there is a specific chance for change. Any impediment to constitutional change is in general a problem for new, progressive parties. With respect to such impediments (for example, the demand for a two-thirds majority), it is always necessary to identify the political enemy whose entrance through the door of legality should be hindered or stopped.

***Two Pre-Fascist Models of Super-Legality***

After WWI the fascist revolution (of 1922) presented a new set of constitutional problems, which had already arisen out of industrial development. It no longer concerned an alternative form of state: monarchy or republic. Monarchy was even retained and used to legalize the new type of constitution, resulting in a situation of rival and even antagonistic conceptions of social, industrial and political progress. No one can deny that fascism both aided and accelerated technical progress, even if one considers its political motives, methods and goals reactionary and atavistic.

The *French Republic* as a form of state was defended in an abstract way and with the help of a limited procedural disposition through a constitutional amendment in 1884, whereby a *motion* to abolish the republican form of state through constitutional revision was ruled out. In general, this was directed against any conceivable enemy of the Republic; in particular, against legitimate monarchy. Less clearly in view, but potentially dangerous, was Bonapartism. Both these enemies remained completely within the accepted political and constitutional system: they were pre-fascist phenomena. One might argue that Bonapartism was a fascism before the fact. But that is true only from the standpoint of a constitutionalism which has nothing more in view than the classical problem of the separation of powers and their suspension by a dictator. In our terms, this is nothing more than a conceptual change typical of rapid development.

In contrast is the German model of the *Weimar Republic*, which became a victim of Hitler's legal revolution. It consists of a number of rather complicated laws and ordinances between 1921 and 1929,

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which carefully sought not to completely close the door to legal political power. In fact, none dared to openly exclude the possibility of a restoration of the monarchy by way of Art. 76 of the Weimar Constitution (consent of parliament and the federal court with a qualified majority). The reason for the complicated normativism of these protective regulations was two political assassinations (Erzberger in 1921; Rathenau in 1922). This German type of "protection of the Republic" evolved in a state with a highly-developed industrial society which scrupulously sought to respect the principles of a liberal constitutional state. The emphasis was on criminal and civil-service measures. This went so far as the creation of a "State Court for the Protection of the Republic" by ministerial decree, but this was in no sense a constitutional Supreme Court. Already on July 2, 1927, a law transferred the responsibilities of this State Court to the Imperial Court. Its duration was limited, because there was no longer a parliamentary majority to grant an extension. One year later, in September 1930, the electoral victory of the Nazis changed the internal political situation.

The juridical problem arises with the question of the enemy to be denied access to constitutional legality. Immediately following the assassination of Rathenau, Chancellor Joseph Wirth of the (Catholic) Center Party announced in the Reichstag: The enemy is on the right! The depth of this feeling in the Social Democratic Party was demonstrated in a speech by Gustav Radbruch celebrating the constitution on August 11, 1928: "A constitution is like a flag in that the more it is pierced by swords and bullets the more it is honored and cherished. There is an old superstitution that only the house will last in whose cornerstone is immured a living being. How many lives have been immured in the foundation of our constitution!" In spite of this declaration, it was not deemed necessary to establish a *republican* form of protection for the state (such as a constitutional law preventing a restoration of the monarchy). Thus the door to legality remained open — to the right as well as the left, the monarchy as well as a liberal, socialist or communist republic.

### *The Precedent of Hitler's Legal Revolution*

In the political thinking of the majority of bourgeois voters during the Weimar Republic, the alternative of right or left still corresponded to the pre-fascist alternative of monarchy or republic. In response, the masses of Marxist workers joined in a chorus of: "The Republic is lame, Socialism is the aim." In September 1930, when the Nazi movement made its breakthrough, the problem of the monarchy had

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already become secondary. Not only did Hitler bask in the twilight of the monarchy, the exiled Kaiser Wilhelm II even expressed a certain sympathy for Nazism and for a while thought Hitler was "doing a good job." President Hindenburg, an honorable old man, was staunchly convinced that his oath to the constitution was compatible with his earlier oath as the Supreme Commander of the Army. He remained what he was, a monarchist. In the prevailing conceptions of the Weimar Constitution, this was all quite legal. As Chancellor (1930-32), Heinrich Brüning, a man of unquestionable character and loyalty, also remained a monarchist and even contemplated legal procedures for the restoration of the monarchy. To the subsequent embarrassment of some of his admirers, he candidly revealed his views on monarchy in his posthumously-published memoirs (1970).

The Nazi movement radically altered the earlier situation. My own juridical efforts to shut the closing but never completely closed door to legality by a rational interpretation of the provisions for revision (Art. 76) of the Weimar Constitution failed, due to the partly sceptical, partly ironic approach of its other interpreters. The door remained open enough to facilitate the destruction of those compromises necessary to the structure of the constitution — wide enough even for Hitler's triumphal march into Potsdam and Weimar. From his first day as chancellor he understood how to use the political premiums of his legal holding of power systematically and with growing ruthlessness. The chancellorship was only the first step in an escalation of consecutive legal revolutions. On January 30, 1933, he dissolved the Reichstag. Then, without one word of protest from the guardians of the constitution, on February 2 he issued an emergency decree (according to Art. 48) ending the incredible confusion resulting from the ambiguous decision of the Supreme Court on Oct. 25, 1932.[14]

Thanks to legal, paralegal and other manipulations (such as the propagandistic exploitation of the burning of the Reichstag), on March 5 Hitler achieved for his party a relatively favorable (in any case, sufficient) election result. Less than three weeks later, on March 24, a majority in the Reichstag granted Hitler extraordinary emergency powers which, in effect, gave him unlimited authority to change the constitution. It marked a second legal revolution. Hitler then managed to close

14. [Tr.] Schmitt's reference here is to the "Solomonic verdict" of the so-called Preussenschlag. See Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton: Princeton University Press, 1983), pp. 165f. See also, Schmitt, "Schlussrede vor dem Staatsgerichtshof in Leipzig," *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles 1923-1939* (Hamburg: Hanseatische Verlagsanstalt, 1940), pp. 180-184.

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the door to legality behind him and to finagle his political enemies into illegality. Should they attempt to resist, or to open the closed door to legality, they could be treated as troublemakers and criminals. With the exception of a few experienced communists, most were both disappointed and indignant at the drastic way in which the political premiums of the legal holding of power were used. The lesson was not lost.

Until today there is still no definitive and complete study of Hitler's "assumption of power." What happened in 1933 can only be called a *national revolution*. A new escalation of the problem of legality was signaled in 1939, when Hitler sought power in an industrial *Grossraum*. The methods and devices which had served him in 1933 were no longer sufficient. From the beginning, the third escalation on the road to the legality of a world revolution was doomed to failure. The origin and backbone of the Hitler movement was nationalism. However, German nationalism of this period (1919-1945) embraced all the contradictory tendencies of right and left, including elements of a national bolshevism. The nucleus of this national mixture constituted a still more elemental and intensive power — the revanchism resulting from the humiliation of Versailles, which Hitler molded into an instrument of his own design.[15] Despite all the racist ideology, the struggle against Versailles remained the driving force behind Hitler's successes between 1919 and 1939. By 1940, the *national war* that had been lost in 1918 was won — a delayed victory. Hitler's fateful decision in 1941 to attack the Soviet Union started the *world war*.

After the collapse of the Hitler regime in 1945, it is more than understandable that everything was done to prevent a repetition of what had happened. This explains the regulation concerning constitutional revision in the Basic Law of the German Federal Republic (May 23, 1949). This *lex fundamentalis* presents itself as the constitution of a social, parliamentary-democratic, federal and pluralistic bourgeois state adapted to a highly developed industrial society whose progressive potential was clearly demonstrated in the so-called "German economic miracle." Seen from our perspective, the new German constitution belongs to a post-fascist era. It not only attempts to narrow the pass to legal political power but also to block it completely to certain political goals and parties.

Thus far the constitutional court (in Karlsruhe) with jurisdiction in

15. On Hitler's revanchism, see the imaginary conversation with Georges Sorel in Jesus Fueyo Alvarez, *La vuelta de los Budas, Ensayo-Ficción sobre la última Historia del pensamiento y de la política* (Madrid: Organización Sala Editorial, 1973), p. 186.

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these matters has banned two political parties: a small, radical party on the right, the Socialist Party of the Reich, and the Communist Party of Germany.[16] In the first instance, one could say that it created a political *causa finita*; in the second, it is more difficult to determine since, contrary to the ban and its legal validity, a new German Communist Party with a slightly altered name has emerged and publicly pursues its political activities. In view of this situation, it is difficult to speak of a *causa finita*. Of the two cases, the second is the more interesting precisely because of the explanation for the decision. The ban of the original communist party is justified with a plethora of historical, ideological and legal arguments. It is probably the most voluminous decision in all of legal history: the official text fills an octavo of more than 300 pages, whereby the decisive arguments have a direct and binding effect. The striking contradiction between the absolute normative claim to validity and the relative political effect of this decision is reminiscent of all the problems of a "government of judges" and of indirect or even apochryphal super-legality.

***Humanity as a Political Subject***

The problem of a legal world revolution ends in a whole series of national and state revolutions. Thus there is a genuine dialectical relation between world revolution and all national and state revolutions. Progress toward a legal world revolution has no parallel in the political unity of Europe or even in a European revolution. If one reads the more than 1000 pages of the standard work on European common law by Ipsen[17] and compares his masterful account of juridical efforts with the political results, one cannot help but be deeply pessimistic. The international forces and powers struggling for the political unity of the world are stronger than European interest in the political unity of Europe. Many "respectable Europeans" await the political unity of Europe only as a byproduct, if not a leftover of a global political unity. The revolutionary energies directed toward a world revolution are stronger and more active than the (still scarcely more than conceivable) prospect of a specific European revolution. Even were regional secessions from an existing national or state unity to become politically acute, they would sooner unite with world-revolutionary forces than with a European revolutionary movement, should such exist. The legality of a European revolution would have to presuppose a certain

16. *Entscheidungen des Bundesverfassungsgerichtshof*, Vol. 2, pp. 1-79; Vol. 5, pp. 85-393.
17. Hans Peter Ipsen, *Europäisches Gemeinschaftsrecht* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1972).

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*European patriotism* in order to effectively constitute a constitutional assembly in the continental European tradition. That would at least be conceivable were England to choose not to remain an island. There are numerous plans and designs for a European National Assembly, all via existing European states and nations.

In order to create the political unity of humanity, a legal *world revolution* would have to presuppose what Hauriou and Perroux have called a "patriotism of the species."[18] The expression is reminiscent of the universal philosophy of Auguste Comte, whom Hauriou critically admired. But the word "species" no longer has for us the same ring it had in German idealism. In Karl Marx' 1844 work on "Political Economy and Philosophy," he hesitantly poses the question of death and immortality and answers it with a reference to the *human species*: "Death appears to be a harsher victory of species over the individual and to contradict the unity of the species; but the particular individual is only a part of the general species and as such is immortal."

Every human being among the billions is one and a piece of humanity. Every day thousands die and thousands more are born. Every day humanity as a whole shows a different face: it is "never together." What right have the people of today to dictate a constitution for the people of tomorrow? The enlightened revolutionaries of the 18th century already recognized the problem and included in their declaration of human and civil rights of June 24, 1793 (Art. 28) the following problematic sentence: "One generation cannot by its laws subjugate future generations." Nevertheless, French jurisprudence made its concept of *pouvoir constituant* [constituting power] the presupposition and legitimation of all *pouvoir constitués* [constituted power]; it even succeeded in creating ideal types of juridical forms and procedures for democratic constitutional theory. In any case, in this formal sense its

18. "Patriotisme de l'espèce." When French authors speak of patriotism, they remain within the nation-state tradition of their country and its ideas of freedom. At least this is true for Auguste Comte, Hauriou and Perroux. In Germany today, however, progressive thinkers consider the words patriot and patriotism almost reactionary and all too paternalistic. This difference is explained by the fact that state and nation have remained congruent concepts in France, whereas in Germany they have never been so. To a loyal German, concepts such as citizenship and nationality, state development and nationalization, sense of state and national feeling could and can be in conflict. Hauriou remains in the French tradition. The present world organization calls itself the United Nations, not the United States, regardless of the status of its individual members. One may well ask whether the United Nations has as yet developed a kind of "patriotism." From the standpoint of Marxist ideology, the answer is academic. According to the eleventh thesis on Feuerbach, the truly human society of socialized humanity is a fatherless society because it has created itself.

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proclamations of human and civil rights were more juridical than those of the Americans that preceded them, in which a citizen of the state in the sense of continental European political thinking was as strange a concept as the classical continental European state and the attendant relation of state and society. Stranger still to the Anglo-Saxon constitutional model was and is the specific French style of legalistic thinking of the author of the constitutional legislation of 1789-99, Abbé Sieyès, who transposed Spinoza's theological-political relation of *natura-naturans* to *natura-naturata* into the juridical-legalistic relation of *pouvoir constituant* to *pouvoir constitués*, and thereby determined the conceptual structure of written constitutions. In so doing, he created an example of political theology only surpassed by Max Weber's theory of charismatic legitimacy.

The esoteric understanding of such an intensive political-theological idea is rigorous and too much to ask of humanity today. The more politically practical and manipulatory esoteric formulas have been made, with the help of complicated relations like that of *pouvoir constituant* to *pouvoir législatif*, the more plausible they have become. Every professional revolutionary has learned how to use them: one removes the existing legal government, proclaims a "provisional government," and convenes a constituent national assembly. In this way, the great French Revolution has become an arsenal of juridical and constitutional precedents. Over the course of two centuries and through many large and small, European and non-European revolutions, arose a legitimating practice in the legalization of *coup d'etat* and revolution. Even the French model of the revolutionary stage of dictatorship has stood the test of time. To the question of what a dictatorship of the proletariat would look like, Friedrich Engels could answer: like 1793. In November 1917, Lenin and Trotsky used this model with great success. However, Engels still left open the possibility of attaining power with a 51% parliamentary majority. Today this road to legality is impeded by the *super-legality* of constitutional norms in many new constitutions. Nevertheless, so long as it is not completely prescribed by statute, this is still no formal elimination of the model.

In practical terms, a transfer of constituent power from nation to humanity is hardly conceivable. The earth might appear much smaller today than in France of 1789. Nevertheless, new technology not only serves centralization but also resistance to it. The United Nations serves not only unity but also the *status quo* of its numerous sovereign members. Is it possible to imagine the General Assembly or even a meeting of the Security Council acting in a manner similar to the night

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of August 4, 1789, when the ruling classes solemnly renounced their feudal privileges? After all, that was a renunciation whose actual realization still required a decade of gruesome civil wars internally and externally. Should the superpowers renounce their hegemonic superiority and its foundation? Where then should this foundation reside? Is the nuclear potential to disappear without a trace on the ocean floor or be transported to the moon? Are all states, great and small, to reveal the secrets of their production without reservation? Do they open their archives and present their confidential files to a world tribunal seeking to try the former enemies of humanity?

Humanity as such and as a whole has no enemies. Everyone belongs to humanity. Even the murderer, at least as long as he lives, must be treated as a human being. If he is as dead as his victim, then he no longer exists. However, until then he remains, good or evil, a human being, i.e., a bearer of human rights. "Humanity" thus becomes an asymmetrical counter-concept. If one discriminates within humanity and thereby denies the quality of being human to a disturber or destroyer, then the negatively-valued person becomes an unperson and his life is no longer the highest value: it becomes worthless and must be destroyed. Concepts such as "human being" thus contain the possibility of the deepest inequality and become thereby "asymmetrical."

With the help of such a precise explanation of concepts, Reinhart Koselleck has (even for jurists) decisively answered the great question of a "patriotism of humanity." The epigraph for his essay[19] is the motto from *Civitas Dei*: "The good and the evil struggle against each other, even as the evil struggle among themselves; the completely good cannot struggle with each other." Koselleck examines three conceptual pairs of political history in terms of their dual linguistic structure and demonstrates how they have become "asymmetrical" — how through a whole series of negative judgments the adversary has been polemically discriminated as unequal: Greek and barbarian, Christian and heathen, and finally, human and inhuman, superman and subhuman. The linguistic potential of argumentation gained from the terms human and humanity leads conceptually and figuratively to an increasingly intensified asymmetrical structure surpassing the divisive power of Greek against barbarian, Christian against heathen. When one man fights another he no doubt considers himself the higher form of humanity and his adversary as something less than human.

19. Reinhart Koselleck, "Zur historisch-politischen Semantik asymmetrischer Gegenbegriffe," in Harald Weinrich, Ed., *Positionen der Negativität*, Vol. VI in the series "Poetik und Hermeneutik" (Munich: Wilhelm Fink Verlag, 1975), pp. 65-104.

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The end result of all this is certainly disconcerting. It reminds us of the deathbed scene of a 19th century potentate. Asked by his spiritual advisor: "Do you forgive your enemies?" he answered with a clear conscience: "I have no enemies; I have killed them all."

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# *Carl Schmitt at Nuremberg*

## by Joseph W. Bendersky

Carl Schmitt was arrested by the Russians in Berlin in April 1945, interrogated and released. In September 1945 he was arrested by the Americans and held in internment camps until March 1947, when he was brought to Nuremberg as a potential defendant in the War Crimes Trials. Although he was released in a matter of weeks without being charged, this episode has created further suspicion about Schmitt's role in the Third Reich. Without oversimplifying the complexity of the question, since everything about this enigmatic jurist and political thinker defies simple or even concise explanation, the decision to interrogate him at Nuremberg was largely due to the infamous reputation he had acquired abroad. A mixture of reality and myth, with the latter clearly dominating, had created the perception of Schmitt as the "Crown Jurist" of the Third Reich and the theorist of Nazi expansionism. Thereafter, dubious assumptions and superficial analyses based on myth rather than fact led to false conclusions.

From 1933 to 1936 Schmitt did seek to play the role of "Crown Jurist" of the Hitler regime. But he never succeeded in playing this role, or in wielding any influence on Nazi legal theory. More to the point, neither did he attempt to, nor did he otherwise provide the theoretical impetus for Nazi foreign policy and aggressive war. From the end of 1936, and throughout the last eight years of the Third Reich, Schmitt held no position in the party or the government and consciously eschewed any attempt to influence Nazi ideology; rather, he confined himself to his work as a scholar at the University of Berlin.

Several factors initially seemed to preclude the emergence of Schmitt even as a figurehead within Nazi legal circles. Completely unsympathetic to Nazi ideology and politics, his Weimar theories were never racial or anti-Semitic. While he ranked among the most cited of Weimar's intelligentsia, the Nazis had totally neglected his work. Moreover, through his writings and constitutional advice to the government from 1930 to 1933, he sought to prevent a Nazi seizure of power, supporting, as a last resort, Chancellor Schleicher's proposal to ban the Nazi Party.



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Neither ideological conversion nor mere opportunism account for Schmitt's metamorphosis in 1933 from Nazi opponent to collaborator.[1] His involvement with Nazism took place in stages, each of which tied him closer to the Third Reich and required more reprehensible compromises. Only after the Enabling Act of March 24, 1933 had virtually destroyed the Republic and granted Hitler dictatorial power did Schmitt begin to reconcile himself to the new regime. At that point, Hindenburg's retention of the presidency and control of the army, together with the presence of responsible conservatives in Hitler's cabinet, created the illusion of influencing the situation. When the Nazis displayed an uncharacteristic tolerance by overlooking Schmitt's earlier opposition in order to acquire the cooperation of such a prestigious name, he believed he might help direct the new regime along more traditional constitutional lines.

Although even at this stage Schmitt maintained his distance from the Nazi Party, he soon succumbed to fear for his personal and professional welfare as he witnessed the purge of the universities. Thus on May 1, 1933 he joined the Nazi Party. Over the next three years he publicly supported the Nazi state under the double illusion that he might influence legal affairs, while removing suspicions of his loyalty.[2] At the same time, he profited professionally from his cooperation: he received a chair of law at the University of Berlin, was made chairman of the Nazi League of German Jurists, editor of the leading law journal, *Deutsche Juristen-Zeitung*, and appointed Prussian State Councillor. It even appeared that he might become the "Crown Jurist" of the Third Reich. But his ideas were rejected by Nazi ideologues and ignored by the Nazi political leadership. By the time Schmitt realized this, his life and work had become inextricably associated with the Nazi regime. He made his most reprehensible compromises between 1934 and 1936, when he attempted to defend himself against charges of opportunism, ideological deviance, and earlier anti-Nazi activity by spouting the rhetoric and publically supporting Nazi racism and anti-Semitism. The only result was an indelible

1. For a more detailed account of Schmitt's Weimar writings and political activity, and of his subsequent involvements with the Nazi state, see Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton: Princeton University Press, 1983).

2. Schmitt's major writings of this period include: *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933); *Über die drei Arten des rechtswissenschaftlichen Denkens* (Hamburg: Hanseatische Verlagsanstalt, 1934); "Das gute Recht der deutschen Revolution," *Westdeutscher Beobachter*. Vol. 9, No. 108 (May 12, 1933); "Nationalsozialistisches Rechtsdenken," *Deutsches Recht*. Vol. 4, No. 10 (May 25, 1934), pp. 225-229; "Der Führer schützt das Recht," *Deutsche Juristen-Zeitung*, Vol. 39, No. 15 (August 1, 1934), pp. 945-950.

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blemish on his character and reputation. One critic summed up his options as "emigration or a concentration camp."[3] A secret SS investigation of Schmitt culminated in 1936 in his public defamation in the SS organ, *Das Schwarze Korps*, and his removal from party offices.[4] He then withdrew solely to professional life, never again dealing with domestic affairs or party politics and legal theory.

In April 1939 Schmitt received renewed attention when he delivered a scholarly lecture on his concept of *Grossraum* at the University of Kiel.[5] He conceived his theory of international order in an effort to analyze the new legal and political situation created by Hitler's dismantling of the traditional state system in Central and Eastern Europe. Then and thereafter Schmitt's *Grossraum* writings never advocated war or conquest, neither did they foster the foreign policy aims of Nazi ideology. He carefully distinguished his concept from Hitler's demographic/racial theory of *Lebensraum*, introducing instead the Monroe Doctrine as a theoretical model. In essence, he saw Germany exercising hegemony over a European *Grossraum* between the Western powers, with their liberal-democratic principles, and the Bolshevik East, with its idea of world revolution — excluding foreign intervention by the same reason as the US in the Western hemisphere. However, owing to its timely nature, Schmitt's *Grossraum* lecture attracted widespread press coverage abroad, where the British papers dubbed Schmitt the "key man" behind Hitler's expansionist policy. Thereafter, it also acquired currency in Germany. The Kiel Institute published Schmitt's lecture as a book and the term *Grossraum* enjoyed a vogue among some writers on international law and politics.[6] But Nazi theorists harshly criticized it for its general lack of substance, in particular its neglect of *Lebensraum* and the racial factors so crucial to Nazi ideology.[7] Although Schmitt continued to write on *Grossraum* until 1943,

3. "Auf dem Wege in die Emigration oder ins Konzentrationslager?" *Deutsche Briefe* (December 24, 1936), ed. Heinz Hürten, Vol. II (Mainz, 1969), pp. 498-499, 510.

4. See the SS *Sicherheitsdienst* files on Schmitt in the Institut für Zeitgeschichte, Munich, AKZ 4062/69, Fa 503, Nos. 1-2.

5. Carl Schmitt, *Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht* (Berlin: Deutscher Rechtsverlag, 1939).

6. "Das Reich im Völkerrecht, Ein Vortrag Carl Schmitts in Kiel." *Frankfurter Zeitung*. No. 172 (April 3, 1939); "Grossräumiges Denken. Professor Carl Schmitt sprach in Kiel," *Deutsche Allgemeine Zeitung*, No. 158 (April 3, 1939); Karl Heinz Bremer, "Völkerordnung und Völkerrecht. Arbeitstagung des Instituts für Politik und internationales Recht in Kiel," *Münchner Neueste Nachrichten*, No. 116 (April 26, 1939); Joseph H. Kaiser, "Europäisches Grossraumdenken: Die Steigerung geschichtlicher Grössen als Rechtsproblem," *Epirrhosis: Festgabe für Carl Schmitt*. ed. Hans Barion *et al.*, (Berlin: Duncker & Humblot, 1968), pp. 538-543.

7. Werner Best, "Völkische Grossraumordnung," *Deutsches Recht*, Vol. 10, No. 25

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he never revised his theory to suit Nazi racial ideology.

During Schmitt's post-war internment in Berlin he began to write a series of essays reflecting on his behavior during the Nazi years, which he published after his release from Nuremberg: *Ex Captivitate Salus.* Defensive yet philosophical, he argued that those on the outside now judging his collaboration did not understand the actual circumstances under which he lived and wrote: "If the situation becomes so completely abnormal, and no one from the outside protects [an individual] from the terror within, then he must determine for himself the limits of his loyalty, especially when the situation becomes so abnormal that one no longer knows the real position of his closest friend. The obligation to unleash a civil war, to engage in sabotage and to become a martyr has its limits."[8] Nevertheless, Schmitt's writings and activities had left the outside world with an impression not only of significant influence but also willing cooperation. According to the October 1945 American report on his interrogation in Berlin, even after 1936 Schmitt ". . . continued to publish works advocating totalitarianism and a European system of control dominated by a Nazi Germany." The notes attached to this report describe him as "very active in the party," as the Nazi "official constitutional apologist," and "the most eminent legal exponent of the Nazi ideology."[9]

After Schmitt's transference to Nuremberg at the request of the legal division of the military governor's office, he underwent three interrogations by Robert Kempner, a German emigre then serving as a US prosecuting attorney at the Nuremberg Trials.[10] In attempting to determine whether Schmitt should face trial, Kempner pursued three main lines of questioning: Did Schmitt's *Grossraum* writings provide the theoretical foundation for Hitler's expansionist policies, making him an accomplice in wars of aggression? Had he served in a decision-making

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(June 1940), pp. 1006-1007; Roger Diener, "Reichsverfassung und Grossraumverwaltung im Altertum," *Reich, Volksordnung, Lebensraum*, (1941), Vol. I, No. 1, pp. 177-229; Reinhard Höhn, "Grossraumordnung und völkisches Rechtsdenken," *Reich, Volksordnung, Lebensraum*, (1941), Vol. I, No. 1, pp. 256-288.

8. Carl Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950), p. 21.

9. See the Preliminary Interrogation Report of Carl Schmitt, Berlin, October 18, 1945, Modern Military Branch, Military Archives Division, Record Group 238, U.S. National Archives, Washington, D.C. There is no transcript of this interrogation, only a one page summary and a second page of additional information on Schmitt, much in error, e.g., that he was a left-wing member and principal legal adviser of the Catholic Center Party, that he had sympathized with separatist movements, and become Rector of the University of Strassbourg.

10. See below the English translations of Schmitt's interrogations.

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capacity? What was his relation to the Jewish question? In addition to his verbal responses, which tended to be brief, Schmitt was asked by Kempner to furnish more thorough written explanations to the first two major lines of inquiry.[11] In the latter Schmitt reiterates the evidence[12] that the Nazis merely tolerated him because of his international scholarly reputation, that he never exercised influence on this totalitarian system or on the plans and policies of its leaders. He also details the significant differences between his *Grossraum* concept and the Nazi racial doctrine of *Lebensraum*, demonstrating the latter's theoretical basis for Hitler's policies of conquest and the party's explicit criticism of his own theory. He had purposely avoided analyzing specific Nazi theories of expansion, since he considered them so "primitive" and any serious scholarly consideration of them would have been extremely dangerous. To draw a connection between his writings and Hitler's policies, Schmitt asserted, would be to reduce *Grossraum* to a meaningless catchword for any type of expanionism.

Kempner did not request that Schmitt elaborate in written form on perhaps the most contentious issue, the point of bitter personal and professional argumentation: anti-Semitism. Schmitt's responses to Kempner's inquiries on the Jewish Question are inconclusive. What is conclusive is that before the Nazi seizure of power there was not the slightest anti-Semitic note in any of Schmitt's writings or personal and professional relations. Quite the contrary, Moritz Julius Bonn, a close personal friend until the end of the Weimar Republic, assisted Schmitt's early academic advancement. Similarly, Schmitt had many devoted Jewish students, dedicated his classic *Verfassungslehre* to Fritz Eisler, a Jewish companion who fell in WWI, and had written a book in praise of Hugo Preuss, the Jewish father of the Weimar Constitution.

After Schmitt began collaborating, he began to pay lip service to Nazi ideology by inserting odd anti-Semitic remarks into his publications.[13] But he never succumbed to Nazi racism. His own wife was of Serbian descent and did not meet Nazi racial criteria. His anti-Semitic references are irrelevant to his work and must be evaluated in terms of what they were — concessions to the party line. Between 1934 and 1936, when Nazi theorists and the SS security service attacked his theories as contrary to their racial ideology and chastised him for

11. See Appendices I-III below.
12. See Bendersky, *Schmitt*, *op. cit.*, pp. 250-262.
13. Schmitt, *Staat, Bewegung, Volk*, *op. cit.*, pp. 42-43, 45; "Nationalsozialistisches Rechtsdenken," *op. cit.*, p. 226.

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previous close associations with Jews, Schmitt sought to defend himself by promoting racist ideas he knew were absurd. Confronted with the possibility of his arrest, he became more outspoken in advocating anti-Semitism, defending the Nuremberg Laws and organizing a conference on the question of purging Jewish influence from German law.[14] This was self-serving, dishonest, and morally despicable — and it failed to convince even his opponents that it was anything but a sham.

The historical record helps explain Schmitt's behavior during these years of uncertainty. It does not, however, excuse or exculpate him for his writings or actions. Fear for himself and his family, together with his early failed effort to mollify the extremism of the Nazis, only partially accounts for his embracement of Hitler's regime. He was also motivated by ambition, willing to compromise for professional aggrandizement and public attention. Denying that he had committed any legally punishable crimes, he did admit moral responsibility both in *Ex Captivitate Salus* and in the last disquisition he wrote for Kempner. He described his experience as " . . . a wretched, shameful and yet authentic case of a Christian Epimetheus," whose intellectual arrogance and lack of sufficient forethought made him susceptible to the tempting rewards the early Nazi state used to attract his cooperation.[15] Kempner had already determined that his writings and activities in Nazi Germany were insufficient for criminal indictment. He was released without charge or exoneration. He later refused to submit to "denazification" because he considered the entire process artificial and meaningless in his case. As an early post-war commentator observed, Schmitt "could neither be nazified nor denazified."[16]

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14. Carl Schmitt, "Die Verfassung der Freiheit," *Deutsche Juristen-Zeitung*, Vol. 40, No. 19 (October 1, 1935), pp. 1133-1135; "Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist," *Deutsche Juristen-Zeitung*, Vol. 41, No. 20 (October 15, 1936), pp. 1193-1199.

15. Schmitt, *Ex Captivitate Salus*, *op. cit.*, p. 12, and "Beantwortung des Vorwurfs," *op. cit.*, pp. 7-8.

16. "Der Fall Carl Schmitt: Charaktermord," *Der Fortschritt*, 4 (January 25, 1952).

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# Interrogation of Carl Schmitt by Robert Kempner (I)[1]

***Kempner***: You do not have to testify, Professor Schmitt, if you do not want to, and if you think you are incriminating yourself. But if you do testify, then I would be grateful if you would be absolutely truthful, would neither conceal nor add anything. Is that your wish?
***Schmitt***: Yes, of course.
***Kempner***: And if I come to something you might find self-incriminating, you can simply say you prefer to remain silent.
***Schmitt***: I have already been interrogated by the C.I.C.[2] and in the camp.[3] I

1. [Translated by J. W. B.] *Interrogation Reports of Carl Schmitt, Nuremberg, Office of U.S. Chief Counsel for War Crimes, Evidence Division*, Transcript No. 1842. Modern Military Branch, Military Archives Division, Record Group 238, U.S. National Archives. This transcript begins: "Interrogation of Karl Schmitt (I) by Mr. Kempner. Present: Miss Jane Lester. April 3, 1947, afternoon. Stenographer: Irmtrud Maurer." The following translations of Schmitt's Nuremberg interrogations are based on transcripts I found in 1975 in the National Archives in Washington, D.C. Some years ago, Kempner published excerpts from his interrogations with Schmitt. Unfortunately, these are unreliable because he splices together questions and answers from all three, out of sequence and minus contextual information. See Robert Kempner, *Das Dritte Reich im Kreuzverhor: Aus den unveröffentlichten Vernehmungsprotokollen des Anklagers* (Munich: Bechtle, 1969), pp. 293-300. More recently, the complete transcripts have been published in Germany by Claus-Dietrich Wieland, "Carl Schmitt in Nürnberg (1947)," *1999: Zeitschrift für Sozialgeschichte des 20. und 21. Jahrhunderts*, Vol. 2, No. 1 (January 1987), pp. 96-122. Although Wieland provides some useful editorial commentary, the general framework in which the interrogations are placed is very misleading. He merely lists Schmitt's many Nazi institutional affiliations, without offering any critical explanation or analysis, leaving a one-sided, erroneous impression of Schmitt's Nazi past. Moreover, Wieland includes highly selective quotes, usually those in which Schmitt uses Nazi jargon, while disregarding not only context but often the essential arguments of Schmitt's writings. His purpose in this extends far beyond the derogation of Schmitt, since he attempts to prove significant continuity in constitutional law from the Third Reich to the Federal Republic. He opens his introduction with the statement: "The most important professors of constitutional law who exercised a decisive influence on the interpretation of the Bonn Basic Law (1949), and therefore on its implementation, had already proven themselves to be outspoken supporters of the state (and of the *Führer*-state) during the era of Nazi dictatorship."

2. [Tr.] U.S. Army Counter-Intelligence. See "Preliminary Berlin Interrogation Report of Schmitt," *op. cit.*

3. [Tr.] No transcript or even general summary of this interrogation exists. It was conducted in Berlin on March 27, 1947 by Ossip K. Flechtheim, a German émigré then serving as an attorney on the staff of the American prosecutor for war crimes. Wieland published parts of a letter to him from Flechtheim, consisting of the latter's brief recollections in 1983 of what supposedly had been said during this interrogation almost thirty-five years before. Half the letter deals with an earlier professional/personal rejection of Flechtheim by Schmitt at the University of Cologne in 1933. Also in this case, Wieland does not subject its content or particular interpretation to the type of

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would be glad to tell you all I know. However, I would like to know what I am being blamed with. All previous interrogations ultimately ended in academic discussions.

*Kempner*: I do not know why anyone else has questioned you. I will tell you quite candidly what I am interested in: your participation, direct and indirect, in the planning of wars of aggression, of war crimes and of crimes against humanity.

*Schmitt*: Planning wars of aggression is a new and very broad concept.

*Kempner*: I take it for granted that, as a professor of public law, you know exactly what a war of aggression is. Do you agree with me on the fact that Poland, Norway, France, Russia, Denmark, Holland were invaded? Yes or no?

*Schmitt*: Of course.

*Kempner*: Did you not provide the ideological foundation for those kinds of things?

*Schmitt*: No.

*Kempner*: Could your writings be so interpreted?

*Schmitt*: I do not think so — not by anyone who has read them.

*Kempner*: Did you seek to achieve a new international legal order in accordance with Hitlerian ideas?

*Schmitt*: Not in accordance with Hitlerian ideas and not sought to achieve but diagnosed.

*Kempner*: What is your attitude toward the Jewish Question, in general, and how it was handled in the Third Reich?

*Schmitt*: It was a great misfortune and, indeed, from the very beginning.

*Kempner*: Did you consider the influence of your Jewish colleagues, who were teachers of international law, a misfortune?

*Schmitt*: With the exception of Erich Kaufmann, there were no Jewish legal scholars there [in Nazi Germany].[4] He was a belligerent militarist. He originally coined the phrase "The social ideal is the victorious war," in "Die *Clausula rebus sic stantibus*."[5]

*Kempner*: Now, however, Erich Kaufmann is not here, but you are.

*Schmitt*: I do not want to incriminate him. I also would not like to create the impression of incriminating this man.

*Kempner*: Would you say there was a definite distinction between an international

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critical internal analysis and evaluation required before any document can be considered reliable evidence. See Wieland, "Carl Schmitt in Nürnberg," *op. cit.*, pp. 108-109.

4. [Tr.] Erich Kaufmann, a law professor and former colleague of Schmitt at the University of Bonn in the 1920's, had to emigrate in 1939 owing to his Jewish ancestry. After the war he returned to Germany and served as a foreign policy adviser to the government.

5. [Tr.] The term in the interrogation transcript "*Sicherheitskrieg*" [war for security] is an error; it should have been written as "*siegreiche Krieg*" [victorious war]: ". . . der siegreiche Krieg ist das soziale Ideal." This statement appears in Kaufman's book, *Das Wesen des Völkesrrechts und die Clausula rebus sic stantibus* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1911.

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and constitutional law influenced by Jews and that which you taught and advocated?
***Schmitt***: The standpoint of Jewish colleagues was not sufficiently homogeneous for that.
***Kempner***: You have never written anything along these lines?
***Schmitt***: No.
***Kempner***: Have you ever written such things?
***Schmitt***: I wrote only once that Jewish theorists have no understanding of this territorial theory.
***Kempner***: Where did you write that?
***Schmitt***: In a little essay in the *Zeitschrift für Raum-Forschung*, 1940-41.[6]
***Kempner***: What was that essay called?
***Scmitt:*** I cannot recollect the title.
***Kempner***: Who published the journal?
***Schmitt***: The Reich Office for *Raum* Research.
***Kempner***: How long is the essay?
***Schmitt***: *Völkerrechtliche Grossraumordnung* had 50 large octavo pages.
***Kempner***: How many editions?
***Schmitt***: I believe 5 or 6. The essay was reprinted there from the *Zeitschrift für deutsche Raumforschung*, published by Deutscher Rechtsverlag, a press of the National Socialist League of Jurists.
***Kempner***: It had a swastika on its publisher's insignia?
***Schmitt***: Yes, of course.
***Kempner***: Reading your writings creates a completely different impression from the one you are now providing.
***Schmitt***: If one reads them completely, they have very little to do with the Jewish Question.
***Kempner***: You admit, however, that it [*Völkerrechtliche Grossraumordnung*] is clearly an international legal theory of *Lebensraum*?
***Schmitt***: I call it *Grossraum*.[7]
***Kempner***: Hitler was also for *Grossraum*.

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6. [Tr.] The journal was actually *Raumforschung und Raumordnung*, Vol. 4 (1940), where Schmitt published "Der Neue Raumbegriff," which was then reprinted as part of the Fourth Edition (1941) of *Völkerrechtliche Grossraumordnung*, *op. cit.*

7. [Tr.] For a discussion of *Raum* studies and politics in Germany during the first half of this century in general and the distinction between Schmitt's *Grossraum* concept and Hitler's racial doctrine of *Lebensraum*, see Bendersky, *Carl Schmitt*, *op. cit.*, pp. 250-261. In fact, neither Schmitt nor *Grossraum* is even mentioned in the most recent study on the foundations of the Nazi ideology of conquest and *Lebensraum*. See: Woodruff D. Smith, *The Ideological Origins of Nazi Imperialism* (New York: Oxford University Press, 1986). The same is true of earlier standard works such as Norman Rich, *Hitler's War Aims: Ideology, the Nazi State, and the Course of Expansion* (New York: W. W. Norton, 1973). See also: Lothar Gruchmann, *Nationalsozialistische Grossraumordnung: Die Konstruktion einer "deutschen Monroe-Doktrin"* (Stuttgart: Deutsche Verlags-Anstalt, 1962), and Schmitt's postwar book, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, 1950).

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***Schmitt***: All of them were probably for it, including citizens of other countries.
***Kempner***: A reading of this essay shows it is written in the purest Hitler style.
***Schmitt***: No. I am proud of the fact that since 1936 I had nothing to do with that.
***Kempner***: Previously, therefore, you wrote in the Hitlerian style.
***Schmitt***: No, I did not say that. Until 1936 I considered it possible to give a meaning to these catchwords.
***Kempner***: You assumed the editorship of various journals, which previously you had not. *Die deutsche Juristenzeitung*, for example?
***Schmitt***: From 1934 to 1936.
***Kempner***: Would it not have been better to have avoided becoming involved with that?
***Schmitt***: Yes, now one can say that.
***Kempner***: The accused is confronted with his publication *Völkerrechtliche Grossraumordnung*, 4th Edition, and the following passage from page 63 is read to him: "These Jewish authors had, of course, as little to do with the previous development of *Raum* theory as they had with the creation of anything else. They were also here an important cause of the dissolution of concretely-determined territorial orders." Do you deny that this passage is in the purest Goebbels-style? Yes or no?
***Schmitt***: I do deny that the content and form of that is in Goebbels' style. I would like to emphasize that the serious scholarly context of that passage should be taken into consideration. In its intent, method, and formulation it is a pure diagnosis.
***Kempner***: Do you want to say anything else?
***Schmitt***: I am here as what? As a defendant?
***Kempner***: That remains to be determined.
***Schmitt***: Everything I stated, in particular this passage, was intended as scholarship, as a scholarly thesis I would defend before any scholarly body in the world.
***Kempner***: Here, however, we are before a criminal court. You were the directing, one of the leading jurists of the Third Reich.
***Schmitt***: Someone who in 1936 was publicly defamed in *Das Schwarze Korps* cannot be described in that fashion.[8]
***Kempner***: How does your interpretation fit with the fact that, after 1936, you delivered lectures financed by the Nazi Reich in Budapest, Bucharest, Salamanca and Barcelona; in the notorious espionage and propaganda institute, "The German Institute in Paris," and other places. Did you deliver lectures? Yes or no?
***Schmitt***: Yes, I did deliver lectures. They were not paid for.
***Kempner***: Who paid for the trip?

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8. [Tr.] Two articles in this SS journal viciously attacked Schmitt as an opportunist who was never truly an anti-Semite or racist. See: "Eine peinliche Ehrenrettung," *Das Schwarze Korps*, No. 49 (December 3, 1936), p. 14, and "Es wird noch peinlicher," *Das Schwarze Korps*, No. 50 (December 10, 1936), p. 2.

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***Schmitt***: Part [was paid] by the inviting societies, part by German agencies.
***Kempner***: Therefore: the Nazi Reich.
***Schmitt***: That was a forum for me; I had no other.
***Kempner***: You see that there is in this fact of your defamation, on the one hand, and your lectures, on the other, a certain contradiction very difficult for me to comprehend.
***Schmitt***: If you are interested in an explanation, I would be pleased to give you one. This is the first conversation I have had about that since 1933. I would like to discus that.
***Kempner***: It is related to what extent you provided the scholarly foundation for war crimes, crimes against humanity, the forceful expansion and widening of *Grossraum*. We are of the opinion that the executing agencies in the administration, the economy and the military are not more important than the men who conceived the theory and the plans for the entire affair. Maybe you would like to write down what you have to say. To what extent did you provide the theoretical foundation for Hitlerian *Grossraum* policy?
***Schmitt***: I will write it down. This is thus the question to be answered.

## Interrogation of Carl Schmitt by Robert Kempner (II)[9]

***Kempner***: Were you so kind to write your answers?
***Schmitt***: It took a long time, because I was given a table so late. May I give it to you?[10]
***Kempner***: I must, of course, read through this later. Who invited you to the German Institute in Paris?
***Schmitt***: The director, Dr. Epting, on the suggestion of certain gentlemen whom he knew. The lecture was a pretext for the trip. I was accompanied by Pierre Linn, a Jewish friend and his wife.[11]
***Kempner***: I am interested in the German Institute.
***Schmitt***: I had very little to do with that. The director was Epting. The motivating force behind my invitation was Dr. Bremer. He had many friends, including Frenchmen such as Alfred Fabre-Luce.
***Kempner***: Would you be so good as to sign the pages with your initials C.S.? Are all the facts correct? Then please write: The truth of the above statements

9. [Tr.] Transcript No. 1992, Interrogation Report of Carl Schmitt, *op. cit.* This transcript begins: "Interrogation of Professor Carl Schmitt (II) by Dr. R.M.W. Kempner. Present: Miss Rentelen. April 21, 1947, 2 until 2:30 pm. Stenographer: Irmtrud Maurer."
10. [Tr.] See Appendix I.
11. [Tr.] Pierre Linn had translated Schmitt's critique of political romanticism into French. See: *Romantisme politique* (Paris, 1928).

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is pledged on my word of honor.
***Schmitt***: Yes. May I ask something else?
***Kempner***: What questions do you still have?
***Schmitt***: You wanted to lend me *Völkerrechtliche Grossraumordnung*.
***Kempner***: You still have not received it?
***Schmitt***: No, I still have no answer from my wife. May I request that my wife send me the manuscript of the lecture on the "Lage der europäischen Rechtswissenschaft"? The manuscript is still with the publisher. The lecture was basically intended for a *Festschrift* for Popitz.[12] I have not said anything that is not contained in this manuscript. That provides perhaps the best account of the remarks I made in Bucharest, Budapest, Madrid, Barcelona Coimbra.[13]
***Kempner***: Have you now been able to reconcile yourself in any way to the role you played in the Third Reich and in the preparation of criminal offenses, as I interpret them?
***Schmitt***: Here we are not really disputing facts. I accept them. It is a question of interpretation and legal evaluation. As a long-standing professor of jurisprudence, I cannot stop thinking.
***Kempner***: Nor should you. To clarify again what the theory of the public prosecutor is: Did you participate in the preparation, etc. of wars of aggression and in other punishable offenses related to these at the point of decision-making? What is your answer to that? Could you state it concisely in a single sentence?
***Schmitt***: I neither served in a decision-making capacity, nor did I participate in the preparation of wars of aggression.
***Kempner***: Our theory about the term "point of decision-making"[14] is as follows: is not one of the leading university professors in this field at least as important in the decision-making-process as other high state or party officials?
***Schmitt***: Also in a totalitarian state?

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12. [Tr.] A political conservative and highly respected professional civil servant, Johannes Popitz served as state secretary in the Weimar finance ministry, then as Prussian finance minister. Popitz greatly admired Schmitt's Weimar writings and the two men became and remained very close friends. Having worked together in supporting the presidential government of Hindenburg (1930-1933), Popitz was quite instrumental in bringing Schmitt into his first act of collaboration with the new Nazi state in April of 1933, when they both hoped to maintain conservative influence in the government. Later a member of the conservative anti-Nazi resistance, Popitz was executed for his involvement in the conspiracy that led to the attempted assassination of Hitler on July 20, 1944.

13. [Tr.] The lecture Schmitt delivered to the law faculties at these various universities, far from being Nazi propaganda, was published after the war. See: *Die Lage der europäischen Rechtswissenschaft* (Tübingen: Internationaler Universitätsverlag, 1950).

14. [Tr.] Though it soon turned out to be irrelevant to Schmitt, this was a very important legal distinction for Kempner. In the Nuremberg trials of the major war criminals that ended in October 1946, the court had ruled that in order to be charged with criminal conspiracy a defendant's act "must not be too far removed from the time of decision and action." See: *Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg, 1948), Vol. 22, pp. 414, 467-468.

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*Kempner*: Yes, particularly in a totalitarian system. And furthermore: what we understand by wars of aggression is very clearly expressed in the decision of the IMT, with which you are familiar.[15]
*Schmitt*: Yes, it would be good if I could have the complete text. I have no material at all. I have one final question, which is not connected with the preceding. You mentioned the name Radbruch.[16] I hardly know him. If you want to inquire about my activity as a professor during the last 10 years, I would request that you question colleagues who really have known me.
*Kempner*: Who, for example?
*Schmitt*: Carl Brinkmann. He was in Berlin until 1944 and is now in Erlangen.[17]
*Kempner*: I will be glad to question him. Was he a party member?
*Schmitt*: No, otherwise he would not now be a professor in Erlangen. I do not believe he was a party member. It may not be pleasant for him to do that. The Dr. Carl Schmitt myth is pure myth. Carl Schmitt is quite a peculiar individual, not just a professor; he is also a composite of various other individuals. I observed this when I was interrogated by Dr. Flechtheim. You can inquire about that.
*Kempner*: I have my sources.
*Schmitt*: Radbruch is a politician. He sees things in a particular way and does not understand that a person can sit quietly at a desk.
*Kempner*: Did Rousseau leave his desk?
*Schmitt*: No.
*Kempner*: Who else did not leave his desk?
*Schmitt*: Thomas Hobbes.
*Kempner*: It is very difficult to render a criminal judgment.
*Schmitt*: May I speak frankly. I have now been in solitary confinement for 3 weeks . . .
*Kempner*: You do not want to be alone?
*Schmitt*: I would like to be even more alone. All possible questions were asked of me at the time I was placed under arrest. I said then only: I would like to be able to speak about my case from my own perspective. I desire only to clarify things to myself. But my name, my physiognomy is too famous for me to be left alone. I had hundreds of students in all countries, thousands of listeners.
*Kempner*: To the extent that it relates to audience, your reputation vacillates in history.
*Schmitt*: That will always be the case when someone takes a position in such situations. I am an intellectual adventurer.
*Kempner*: You have the blood of an intellectual adventurer?

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15. [Tr.] International Military Tribunal at Nuremberg.
16. [Tr.] Gustav Radbruch, a well-known socialist jurist and reformer who had served as a Social Democratic minister of justice in early Weimar.
17. [Tr.] Highly respected as a scholar, Carl Brinkmann was a professor of political economy at several major German universities.

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*Schmitt*: Yes, that is how thoughts and knowledge develop. I assume the risk. I have always accepted the consequences of my actions. I have never tried to avoid paying my bills.
*Kempner*: If, however, what you call the pursuit of knowledge results in the murder of millions of people?
*Schmitt*: Christianity also resulted in the murder of millions of people. One does not know unless one has experienced it oneself. I by no means feel, as do many others, an innocent victim to whom something horrible has happened.
*Kempner*: But this is no comparison. And is it not, simply stated, a criminal investigation of your personal make-up?
*Schmitt*: I can tell you a great deal about that. If I were asked, I would be glad to express my honest opinion.
*Kempner*: I would like to ask you something without touching on your own matters. Let us for the moment consider a case from another area. You are familiar with Mr. Lammers and, as a constitutional lawyer, his position.[18] You know what a Reich Minister is?
*Schmitt*: Personally, I have only seen him once, in 1936. He was Chief of the Reich Chancellery, where everything was concentrated.
*Kempner*: How do you explain psychologically that a man like Lammers, as an old professional civil servant, signed hundreds of horrible things?
*Schmitt*: I do not understand that. I have not done that.
*Kempner*: That does not relate to you, you avoided such things? How do you explain that a diplomat like von Weizsäcker, as a state secretary, signed hundreds of such things?[19]
*Schmitt*: I would like to give you a nice answer. The question has great significance, a distinguished man like von Weizsäcker . . . Only I must protect myself . . .
*Kempner*: This theme could get us into constitutional matters. At present, I am not questioning you about Lammers personally, but about the position of Chief of the Reich Chancellery in a totalitarian state. I am asking you neither as a defendant nor as someone accused or as a witness, but as a constitutional lawyer. I am asking you here purely as an expert, why this position is more important than that of another Reich Minister?
*Schmitt*: Perhaps Bormann was more important.[20]
*Kempner*: That is not completely correct. The position of Bormann first became important in 41-42.

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18. [Tr.] Hans Heinrich Lammers, state secretary in the Ministry of Interior during Weimar, he became Chief of the Reich Chancellery in 1933 and Hitler's major legal adviser. A Nuremberg court sentenced him in 1949 to twenty years imprisonment.
19. [Tr.] A professional foreign service officer, Ernst Freiherr von Weizsäcker served the Third Reich as a state secretary, diplomat, and ambassador to the Vatican. He received a seven year sentence from a Nuremberg court in 1949.
20. [Tr.] Martin Bormann, Hitler's personal secretary, was condemned at Nuremberg to death *in absentsia*.

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*Schmitt*: I would like to attempt to formulate this for you as best as possible in writing.
*Kempner*: In the Bismarckian Reich I would have stated: Lammers had the key to lawmaking in his hand. In the dictatorship he had more in his hand: the handle to the door of the dictator. Does that explain the significance of his position?
*Schmitt*: Yes.
*Kempner*: Write that up in a small essay.

## Interrogation of Carl Schmitt by Robert Kempner (III)[21]

*Kempner*: How are you Professor Schmitt? Have you written something?
*Schmitt*: Yes. I have brought along both written elaborations and have signed them. I no longer recall the exact wording of your question: "Did you participate in the preparation of wars of aggression, etc.?"
*Kempner*: Do you pledge the accuracy of your statements on your word of honor?
*Schmitt*: On my word of honor I pledge the accuracy of the statements from pages 1-17. That is a written elaboration, a legal opinion [*Gutachten*].
*Kempner*: Please write at the end of your elaboration: I pledge that I have given the above legal opinion according to the best of my knowledge and conscience.
*Schmitt*: Yes. The legal opinion is on pages 1-15.
*Kempner*: I will examine this very closely.
*Schmitt*: I am happy to have found a reader once again. In general, my writings have been read very poorly. I fear the superficial reader.
*Kempner*: I will read through it not only from the standpoint of criminal law, but also from the standpoint of constitutional law.
*Schmitt*: I have written it with great interest. [Pr. Schmitt submits the assessment of the constitutional position of the Reich Minister and Chief of the Reich Chancellery pages 1-15.[22]] Can it be indicated that I did not do that on my own initiative?
*Kempner*: Professor Carl Schmitt made the assessment of the constitutional position of the Reich minister and chief of the Reich chancellery at the instigation of the interrogator. Are you afraid of doing that on your own initiative?
*Schmitt*: Not that. Maybe it is improper in my circumstances.
*Kempner*: Prof. Carl Schmitt submits, in addition, his own comments on the

21. [Tr.] Transcript No. 2161, *Interrogations Reports of Carl Schmitt, op. cit.* This transcript begins: Interrogation of Carl Schmitt (III) by R. M. W. Kempner. Present: Miss Lester, Miss Rentelen, Mr. Dabbs. April 29, morning. Stenographer: Irmtrud Maurer.
22. [Tr.] See Appendix II.

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subject of participating in wars of aggression.[23] Were you a member of the SS?

*Schmitt*: No.

*Kempner*: To what extent did you participate in the ideological preparation of SS ideology?

*Schmitt*: Not at all. I was an opponent of the SS.[24] I was publicly assaulted and defamed in *Das Schwarze Korps*.

*Kempner*: Do you know Gottlob Berger?[25]

*Schmitt*: I have never seen him.

*Kempner*: Were you not the idol of SS professors such as Boehm, etc.?[26]

*Schmitt*: When a state councillor in a totalitarian system is publicly spat at by the *Schwarze Korps*, that cannot be said.

*Kempner*: After you were spat at, did you not travel to Salamanca, Paris, Madrid, etc.?

*Schmitt*: That occurred in 1943 on special invitation from the faculties.

*Kempner*: You had nothing to do with the SS?

*Schmitt*: I was strongly opposed to it. I was secretly observed and controlled by the SS.[27]

*Kempner*: Did you state that German legislation and the German administration of justice must be carried out in the spirit of National Socialism?[28] Yes or no? Did you state that between 1933 and 1936?

*Schmitt*: Yes. I was from 1935 to 1936 head of the professional organization.[29] I felt superior at that time. I wanted to give the term National Socialism my own meaning.

*Kempner*: Hitler had a National Socialism and you had a National Socialism.

*Schmitt*: I felt superior.

*Kempner*: You felt superior to Adolf Hitler?

*Schmitt*: Intellectually, of course. He was to me so uninteresting that I do not want to talk about that at all.

*Kempner*: When did you renounce the devil?

*Schmitt*: 1936.

*Kempner*: Are you not ashamed to have written these kinds of things at that time, such as, for example, that the administration of justice should be National Socialist?

*Schmitt*: I wrote that in 1933.

*Kempner*: Do you deserve good or poor grades for that?

*Schmitt*: It was a thesis. The National Socialist League of German Jurists extracted it, so to speak, from my mouth. At that time there was a dictatorship

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23. [Tr.] See Appendix III.

24. [Tr.] The extensive SS file on Schmitt shows explicitly that they also considered him their avowed opponent. See SS *Sicherheitsdienst* File, *op. cit.*

25. [Tr.] No relation existed between Schmitt and Gottlob Berger, an SS General sentenced in 1949 to twenty-five years but released in 1951.

26. [Tr.] Kempner's references here remain unknown.

27. [Tr.] In 1936-37, the SS kept a surveillance of Schmitt's activities, publications, mail, and friends; they also used spies to report on his lectures and he received threatening, anonymous hate mail. See SS *Sicherheitsdiest* File, *op. cit.*

28. [Tr.] See, for example, Carl Schmitt, "Neue Leitsätze für die Rechtspraxis," *Juristische Wochenschrift*, Vol. 62, No. 50 (1933). pp. 2793-2794.

29. [Tr.] Schmitt could be referring here either to his work in the Academy of German Law or the National Socialist League of German Jurists.

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with which I was not yet familiar.
*Kempner*: You were not familiar with any dictatorship?
*Schmitt*: No. This total dictatorship was actually something new. Hitler's method was new. There was only one parallel, Lenin's Bolshevik dictatorship.
*Kempner*: Was that something new?
*Schmitt*: Yes, certainly.
*Kempner*: In your own library you have writings about totalitarian dictatorship.
*Schmitt*: Not totalitarian.
*Kempner*: Are you not ashamed that you wrote these kinds of things at that time?
*Schmitt*: Today, of course. I do not consider it appropriate to continue to rummage around in the disgrace we suffered at that time.
*Kempner*: I do not want to rummage around.
*Schmitt*: Without question, it was unspeakable. There are no words to describe it.
*Kempner*: I consider it better if we converse about such matters outside, not here in custody.
*Schmitt*: That would be agreeable to me for reasons of health. I also consider it better in the interest of the case. This professional opinion suffers from this situation.
*Kempner*: I want to see that you return home.
*Schmitt*: My wife gave up the apartment in Berlin. We have no other lodging than with my sisters in Westphalia. Could you see that I go there and not automatically be sent to Berlin?
*Kempner*: That will be taken care of today.
*Schmitt*: I would appreciate it.

# Appendix I

## *Response to the question: "To what extent did you provide the theoretical foundation for Hitler's* Grossraum *policy?"*[1]

To begin with, the word *Grossraum* is not my invention. It acquired general currency in Germany after 1923, and I have no monopoly on it. It is and remains an extremely ambiguous shibboleth. I attempted to formulate and advance a modern spatial concept *(Raumbegriff)* with the means and methods of

1. [Ed.] *Beantwortung der Frage: Wieweit haben Sie die theoretische Untermauerung der Hitlerschen Grossraumpolitik gefördert?* Presented to Prof. Dr. Robert M. W. Kempner at Nuremberg on April 18, 1947. This and the following translations, by Capers Rubin, of Schmitt's written answers to Kempner's questions are from copies of the German

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my discipline. I was engaged in scholarly research which had no other purpose than to further knowledge. I stated this position with respect to scholarship independently and indisputably in the Foreword to my treatise on *Grossraum* and international law *(Völkerrechtliche Grossraumordnung)*, and gave to this work the motto: "We are navigators on the high seas and each book can be no more than a logbook."[2]

Therewith I specified my position with respect to every political platform and every political regime, and particularly with respect to spatial problems and the problem of *Grossraum* in the science of international law. Thus I presume my credentials as a scholar are such that I need not elaborate on the fact. I have always pursued a scholarly course, whether or not the loudspeakers of the politics of the day applauded or defamed me, adopted or ignored my formulations. The political interest that changing power holders and regimes take in scholarly theories changes continually. The scholar is thus faced with the most contradictory situations. He seeks to avoid unnecessary confrontations and not to arm his adversaries. For the rest he must trust that his intellectual impulses and methodical arguments will at once protect him and prevent his scholarly intentions from being equated with political propaganda.

In response to the question of the extent to which I, through my work, provided the theoretical foundation for Hitler's *Grossraum* policy, I would first like to comment on my personal relations to the praxis of Hitler's regime and its policy of conquest.

***My Personal Relations to Hitler's Policy of Conquest***

1. I never in my life exchanged even one word with Hitler. In the twelve years of his political power, I was also never introduced to him or shook his hand. Moreover, I never sought nor had the desire to do so, and never encouraged anyone else to bring this about. I have also never spoken nor sought to speak with [Heinrich] Himmler, [Joseph] Goebbels, [Alfred] Rosenberg, [Martin] Bormann, [Rudolf] Hess, [Ernst] Bohle and most of the other influential men of this regime; never spent even one second in their company. [Hermann] Goering I have not seen since 1936; I also made no attempt to see or speak to him since then. I saw [Joachim von] Ribbentrop once in 1936 and exchanged a few unimportant words with him. Otherwise, I neither spoke to him nor asked him for a meeting. [Hans] Frank I saw only a few more times after my public defamation in December 1936: two or three times in 1937/38 concerning matters of the Akademie für Deutsches Recht, once in the company of Richard Strauss, and twice during the war in social gatherings initiated

originals Carl Schmitt gave to George Schwab in the late 1950s. The originals can be found in Schmitt's *Nachlass* in Die staatlichen Archive des Landes Nordrhein-Westfalen, Düsseldorf.

2. [Ed.] Not having his text before him, Schmitt remembered his motto incorrectly. It should read: "We are all navigators on an endless journey and each book can be no more than a logbook."

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by Mrs. Frank. I never sought him out in his capacity as Governor-General of Poland, was never in Cracow or anywhere else in Poland, and never set foot on occupied Polish territory during the five years of German occupation.

2. Since 1936 I have not been asked for a legal opinion [*Gutachten*] by anyone, either by an office or an individual, neither officially nor privately, and have given no such legal opinions either for the Foreign Ministry or a party authority, for the armed forces, business or industry. I have also given no counsel which in any way, even remotely, was connected with Hitler's policy of conquest and occupation. I neither gave nor took part in a single press conference and received no special information or instructions. I was not invited to the gatherings of intellectuals that Ribbentrop arranged at his country house in Fuschl in August 1939, if I am not mistaken. I also did not seek to be. Like many other professors of law, I did take part in several meetings of the Ausschuss für Völkerrecht led by Prof. Viktor Bruns of the Akademie der Deutsches Recht. But there also I remained silent in discussions and neither had nor sought the slightest influence.

3. During the war I took no office or position, either as a court-martial counsel or counsel on military administration in the occupied areas, as a member of a prize court or anything like that. No such position was offered me, nor did I try to get one. I in no way succeeded Prof. Bruns as director of the Institut für ausländisches öffentliches Recht und Völkerrecht (Kaiser-Wilhelm-Gesellschaft) when Prof. Bruns died in September 1943.

4. After my public defamation in December 1936 I obtained the possibility of lecturing abroad again only in 1942, when Himmler and those around him began to feel unsure about foreign countries and thought it better not to simply ignore, as they had been doing, the pressing invitations from foreign jurists and law schools wanting me to lecture. All my lecture trips abroad had a scholarly character and were no different from those of other German scholars, for example, the Professor of Romance Languages, Karl Vossler, who lectured at the same time as I, spring 1944, in Spain and Portugal. Recognized foreign scholars who were present and heard my lectures will willingly attest to that. I received no special instructions or assignments on these trips. In view of the strict and jealous control of the German Secret Service, I was cautious as was no doubt every other colleague.

5. I neither received any medals of distinction from the Hitler government nor from any foreign government, also none of the numerous decorations conferred so liberally on the occasion of any foreign-policy success (the *Ostmark-Abzeichen*, *Sudetenland-Abzeichen*, *Generalgouvernement-Abzeichen*, etc.). I did not once receive the simple *Kriegsverdienstkreuz* [War Service Cross] that every janitor got in the end, while the higher ranks received the *Ritterkreuz* [Knight's Cross] of the *Kriegsverdienstkreuz*. I also received none of the high or low distinctions given out in such masses by the Italian and Hungarian governments after 1936. In the winter 1943/44 the Rumanian government intended to give me, like numerous other German scholars (Gemilschegg,

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Butenandt, et al.) who had lectured in Rumania, an award. But in my case the announcement that it was to be conferred was never made. I also avoided doing anything about it, and never troubled any of my numerous friends and students about it. In spite of my many Spanish friends and admirers, I also received no Spanish honor. In 1938 the Franco government wanted to appoint me a member of the Royal Spanish Academy; it had already announced the appointment in the press. But the German government expressly denied approval *(Agrément)* for me and demanded that Prof. Bruns be appointed in my stead, which was fine with me.

6. I never had an institute, never became a rector or dean, never had a car, neither an official nor a private one, never owned a house or property, and have no wealth aside from my library. My income after 1933 was considerably less than before 1933. The salary of a State Councillor [*Staatsrat*[3]], 6000 marks a year, did not by far make up for the loss of honoraria for legal opinions and literary publications, which amounted to between 10,000 and 15,000 marks a year. The total royalties for all editions of my book, *Völkerrechtliche Grossraumordnung*, did not even reach 1000 marks. The edition was small, as is only the case with purely scholarly treatises. I do not mention the absence of private enrichment here in order to defend myself against the charge of greed or self-interest. No one has as yet made such a charge. I only mention my financial situation here because it provides a key to understanding my real situation in a system entirely geared to quick enrichment and public acknowledgement. That I survived a decade of public slander and private spying can in no way be explained by the fact that I was an unusual and also curious example of a state councillor. I was a state councillor from whom there was nothing to plunder. That is a fact which should not be entirely overlooked in a judgment of my political relations to Hitler's power politics and his policy of plunder. It is important for the judgment of my motives and intentions.

***The Theoretical Foundation of Hitler's Policy of Conquest***

Most of what has been written about *Grossraum* in newspapers and journals has been by businessmen or administrators engaged in a narrow departmental or private imperialism, so the word "theoretical" cannot very well be applied to what they have to say. What one can with some justification describe as the theoretical foundation of Hitler's policy of conquest is a heterogeneous mixture made up, for the most part, of three different components:

1. from party doctrine, namely from Hitler's statements in *Mein Kampf* and the specific biological theories of *Lebensraum* and race advocated by Rosenberg and his deputies as well as other party authorities;

2. from the more advocatory, apologetic essays and treatises of international law that appeared in journals and pamphlets and took legally-argued positions as defined by the then official standpoint of the German government

3. [Ed.] See "Appendix III"

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on particular developments and controversies (the invasion of Poland and other countries, questions of land, sea and air war, military occupation, neutrality, etc.);

3 from an orientation proposed by a group in the SS, which around 1941 created their own journal — *Reich, Grossmacht, Lebensraum* (or something like that) [actually, *Reich, Völksordnung, Lebensraum*]. My scholarly theory of *Grossraum* in international law was related to these three items of theoretical foundation in the following ways:

re 1) My theory of *Raum* and *Grossraum*, construed from rational concepts, contradicted party doctrine from the beginning. Based on the concept of *Raum*, it rejected biological viewpoints and arguments. I also avoided speaking of race, because by then Hitler had already completely appropriated this ambiguous word. All the offices concerned with the control of publications thus viewed me with open distrust and hostility, even if they, having become uncertain, tolerated me. The *Völkische Beobachter* [the Nazi Party newspaper] never mentioned my book *[Völkerrechtliche Grossraumordnung]* or my name, though it was otherwise the style of the regime to praise to the skies anything taken to be exemplary of "National Socialism" or in anyway desirable. No authority bought and distributed my book for propaganda purposes, while the most deplorable pamphlets in the world were distributed in masses. The book was also not on the list of ideologically approved texts. On the contrary, the authorities directed or influenced by Rosenberg's office of *Weltanschauung* labeled it as inconsistent with National Socialism *[nicht-national-sozialistisches]* and warned against me in party directives and similar orders because I was Catholic. A review in the Nazi monthly actually suspected my book of being Vatican-inspired *[vatikanisch]*. Authentic followers of Hitler considered my book superfluous and harmful on the grounds that the true National Socialist knew only one standard text, Hitler's book *Mein Kampf*, and that this book contained a program for the conquest of Russian soil and the destruction of France but no word about *Grossraum*. The originality mania of Hitler and his cohorts was unbelievable and their ironclad egomania appalling. Such a word as *Grossraum* appealed to them because in their self-importance they took everything with the word *gross* [great] to be their own. Nevertheless, in their belief in the uniqueness and incomparability of everything they did, they still had enough political instinct to feel the deep contradiction between *Grossraum* and *Lebensraum* and to sense the ideological danger that a critical, scholarly concept of *Raum* posed to their famous *Lebensraum*.

Following the wisdom of the ancient maxim, *non possum scribere in eum, qui potest proscribere*, I was cautious with such opponents and avoided polemical replies. For the rest, there is still need for an explanation of why my treatise on *Grossraum* and international law was published by a press of the Nazi Rechtswahrerbund. My treatise on *Grossraum* and international law was one of the lectures dealing with questions of international law delivered at the beginning of April 1939 at a conference of the Kiel Institute of International Law to

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mark the 25th anniversary of several of its professors, among them also a Polish university professor. The lectures were published by the director of the Institute, Prof. Ritterbusch, in a collection of the Deutscher Rechtsverlag. Without any effort on my part and certainly also to everybody's surprise in Germany, in mid-April my lecture suddenly became famous because the [London] *Times* and the *Daily Mail* published extensive reports. As a result, the lecture also appeared in a special edition, whereas it would otherwise certainly have remained buried with the other lectures in the conference volume. This type of publication had the advantage that my book escaped the censorship of the party, in particular of Rosenberg. That suited me just fine. It was a joke on the leviathan, and any author who has personally experienced the pressure of an intellectually bankrupt censorship will know the satisfaction I got from it.

re 2) This category has to do with arguments of jurisprudence and international law as they appear in most conflicts of foreign policy, in which each side more or less elegantly seeks to demonstrate the justice of their cause and the injustice of the opponent's cause. In view of Hitler's methods, it was difficult to argue for the German side in this way. Nevertheless, there was a sequence of controversies which raised numerous questions of international law. I refrained from expressing any advocatory or apologetic opinions with respect to these questions — the invasion of a foreign country, military law, the right of neutrality, etc. The most important scholarly legal journal that dealt with questions of international law from the German standpoint in these years (1939-45) was the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, edited by Prof. Viktor Bruns, director of the Institute of Foreign Public Law and International Law of the Kaiser Wilhelm Society. Bruns, who also headed the International Law Committee of the Akademie für Deutsches Recht, was a specialist in international law with an international reputation and great personal distinction. When he died in the fall of 1943 the *American Journal of International Law* gave him a respectful obituary. One of the co-editors of the journal was Count Stauffenberg, a brother, collaborator and companion of the ill-fated Count Stauffenberg who plotted the asssination attempt on Hitler on July 20, 1944. Although the journal listed me and Heinrich Triepel as "co-editors," after 1936 I no longer had any influence nor published any more articles in the journal. The journal did publish valuable articles and good material obtained from official German authorities. I do not know how its collaboration with the Foreign Office functioned. I never tried to find out, and Prof. Bruns would probably have never let me in on this closely-guarded secret of his journal.

On the second level was the *Monatshefte für auswärtige Politik*, edited by Prof. Fritz Berber. It published shorter articles and glosses on current events concerned with international law. I no longer remember whether or not I published an article in this journal during the war. If so, it could only have been a *parergon* [spin-off] of my *Völkerrechtliche Grossraumordnung* — not an advocatory or apologetic statement with respect to a concrete event or contemporary

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controversy. A series of pamphlets dealing with contemporary questions of international law was published in association with this journal, but I had no part in it and published no such pamphlet.

The old *Zeitschrift für Völkerrecht*, founded by Josef Kohler, was edited in these years by Prof. Gustav Adolf Walz and kept on a relatively scholarly level. It had, as far as I know, no firm connection with an official foreign policy office, at least not of the kind characteristic of the two above-mentioned journals of international law. I was one of the co-editors and in 1940 I published therein a longer article, "Raum und Grossraum im Völkerrecht," which elaborated on the spatial problem and touched on the contradiction of two spatial orders in international law (of land and sea).[4]

Advocatory and apologetic articles concerned with disputatious questions of international law during the war more often appeared in the *Zeitschrift der Akademie für Deutsches Recht*. I published no such articles, but did publish one or two smaller essays, which I included in the 2nd, 3rd and 4th editions of *Völkerrechtliche Grossraumordnung*. An article by me on the concept of *Raum* from the standpoint of jurisprudence was also published in the *Zeitschrift für Raumforschung*, a journal not concerned with questions of international law or foreign policy. This article, intentionally abstract, was concerned exclusively with the particularly difficult question of national territory. I included it as the last chapter in the 4th edition of *Völkerrechtliche Grossraumordnung* in order again to remove any doubt as to the purely scholarly character of my work and to distance myself from propaganda slogans.

The journal, *Deutsche Rechtswissenschaft*, does not belong in this category of publications dealing with international law. Nevertheless, (around 1941) I published in this journal an important article concerning "Die Auflösung des europäischen Völkerrechts in ein allgemeines internationales Recht" ["The Dissolution of European International Law into a General International Law"]. This article is also neither advocatory nor apologetic. It is of particular interest with respect to my diagnostic method of formulating problems in international law. It inspired the famous Geneva pacifist and scholar of international law, Prof. Hans Wehberg, the editor of *Friedenswarte*, to publish a long article dealing with my theory of international law in his journal (in 1943). Prof. Wehberg subtitled his article: "Auseinandersetzung mit Carl Schmitt" [Debate with Carl Schmitt]. Wehberg was one of the earliest and most important proponents of the criminalization of aggressive war. He was the first European jurist of international law to promote criminal punishment of statesmen responsible for a war of aggression. At that time, in 1943, my publications on the problem of *Raum* and *Grossraum* were extant, and Prof. Wehberg was also very familiar with them. Nevertheless, his "Debate with Carl Schmitt" did not contain even the slightest suggestion that my theory could be connected with the crime of a war of aggression. Both in content and in form his arguments were much more couched in terms of a scholarly debate.

4. See the Foreword to the 4th edition of *Völkerrechtliche Grossraumordnung*.

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It would never occur to any reader of Wehberg's article that the famous pacifist would consider me, because of my writings, either a criminal or a party to the new criminal offense inaugurated by Wehberg himself. Nor would it ever occur to his readers that his debate with me was with a criminal instead of a scholar whom he took seriously.

re 3) The SS only took up the theme of *Grossraum* after 1940, most likely owing to [Dr. Werner] Best,[5] who came across it in France and later in Denmark and, in typical SS style, sought to overpower this interesting new subject. In addition to Best, the editors of this new journal [*Reich*, *Volksordnung*, *Lebensraum*] were a few other SS leaders whose names I no longer remember, and Prof. Reinhard Höhn, the head of the Institut für Staatsforschung and successor of the chair in the juridical faculty of the University of Berlin formerly held by Prof. Rudolf Smend. He did the actual editorial work and directed publications on foreign administrative law. Höhn was enormously industrious and also gifted. In other, more normal times, he could have become a good teacher and researcher in his discipline. As it was, however, he gave himself over to the single-mindedness of a cheap and basically reactionary dogmatism. This group had the ambition to become an intellectual elite and to form a kind of German "brain-trust" in this field. At the same time, however, they were compelled to present themselves as representatives of true Hitlerism. Since that was difficult to reconcile with intellect and "brain-trust," an inner contradiction arose for which the concept of *Grossraum* was a kind of touchstone. On the one hand, they sought to appropriate this interesting new theme. On the other hand, they held to the authentic Hitlerian term, *Lebensraum*, and took every opportunity to emphasize this with the sharpest, most racist biologism. From the winter of 1941/42 a growing inner uncertainty became recognizable and with it the need for better ideological supports than either the backwoods orthodoxy of Hitlerism or the literary holdovers of 19th century Rosenbergism could provide. The inner contradiction was mirrored in the tactics with respect to my *Grossraum* theory of international law. On the one hand, it was already too well-known to be handled in the Rosenberg style. On the other hand, they could not simply adopt it without recognizing its source. Owing to its originality and incomparability, they had to sharply separate themselves from it. Best published an article against my *Grossraum* theory in the *Juristische Wochenschrift* in which he condemned it as "*unvölkisch*." He insisted that one no longer speak of a *Völkerrechtsordnung* but avoid the word *Recht* [law] and speak only of a *Völkerordnung*. Höhn wrote a long introduction to his new journal, which he expressly called: "Debate with Carl Schmitt." Thus in these years there was not only a great "Debate with Carl Schmitt" from the pacifist side but also from the SS side, about which still more and other articles appeared in scholarly journals. During the war there were perhaps half a dozen such exchanges of opinion.

Höhn's introduction was written with great care, but it fell apart when it

5. [Ed.] Former legal adviser to Hitler; Gestapo legal expert who became Reich Plenipotentiary for Denmark.

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came to the deep irreconcilability of a biologically-racist *Lebensraum* and a rationally-construed *Grossraum*. It was immediately clear to me theoretically when I saw that Höhn had not taken note of my point of departure, namely a modern concept of *Raum*, but proceeded to speak of *Grossraum* without any idea of the most difficult problem — the spatial concept. For me, the criterion for a scholarly discussion of the problem of *Grossraum* was always an awareness of the concept of *Raum*. Otherwise, the fog that surrounds any raucous slogan like *Grossraum* remains entirely impenetrable.

I took this sudden interest of an influential SS group in my theory as cause for the greatest caution. Anyone familiar with me and my work would never believe that I could become involved in SS ideas or tendencies. I was publicly defamed by the SS in 1936. I knew something of the legal, paralegal and illegal techniques of the SS and Himmler's circle, and had every reason to fear the interest of the new elite. Thus I kept my distance with all due caution. I avoided Best, the political head of the group; never exchanged a word with him and never shook his hand. As a colleague in the Law Faculty at the University of Berlin, I often saw Prof. Höhn. I was polite and correct with him, as any sane person would be with a member or associate of the secret police, especially when one knew that this police was keeping an eye on him. Also here, following the maxim *non possum scribere in eum qui potest proscribere*, I did not join in public discussions.

This overview of the various attempts at a theoretical foundation of Hitler's policy of conquest demonstrates their essential types and forms; above all, it demonstrates that my thoroughly theoretical position was not only singular and isolated but totally different. It is not easy to understand the processes and situations within a totalitarian system from without and *ex post facto*. It is particularly difficult to understand the situations in which a true theoretician can find himself in such a system, particularly during a total war, when ultimately even the situation of his nearest neighbor and closest friend often becomes completely opaque. There is also no protection against the exploitation of the results of scholarly research. Judgment of scholarly discussion of questions of international law becomes particularly difficult, since the subject itself is by nature political and the situations change quickly. Relevant processes and facts of international law, such as the incontestability of a generally recognized (*de jure*) government or ratified treaties must simply be acceped by jurists of positive international law.

Objectively, what is decisive is the distinction between a serious scholarly theory and a propaganda slogan. Subjectively, what is decisive is the distinction between the intention to promote scholarly research and knowledge and that to promote practical goals and achieve practical results. If one compares the above-mentioned attempts at a theoretical foundation of Hitler's policy with the intellectual *habitus* of my works, the question posed is already answered. My theory of *Grossraum* and international law has a broad scholarly framework, is the result of scholarly research; it is a theory which has been and should be taken seriously as a scientific hypothesis. Hitler had no

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*Grossraum* policy in the sense of this theory. He pursued a policy inimical to this theory in both thought and principle. One can call his policy a *Grossraum* policy only if one ignores the specific meaning of this word and makes it into an empty slogan for every type of expansion. Hitler's policy of conquest was so primitive that any kind of scholarly analysis necessarily threatened it. In a worldwide debate in which all the means of occidental rationalism would come into play, the confrontation of Hitler's policy with a truly scholarly concept would only serve to expose that policy rather than provide its foundation. That might also be true for a biological theory, if it is really scientific. In any case, it is true for a thoroughly reasoned and scholarly conception of international law opposed to the biologism of Hitler's *Weltanschauung*. Hitler himself and his followers no doubt understood that. That is why the whole party press treated me with deadly silence. If a few authorities, journalists and propagandists tolerated my name being used as a figurehead, that is still no theoretical foundation. It belongs much more to the style of a totalitarian system, which exploits the names of numerous scholars, destroys what it cannot exploit, and seeks to exploit what it cannot destroy.

It would thus only be an unjustified and absurd gain for Hitler — an undeserved credit to an intellectually repugnant system — to compare his policy of conquest with my thoroughly conceived and scientifically construed concept. To do so would be to give a posthumous and completely unjustified value to a type of power politics and expansionism that was basically a dreadful business.

***Carl Schmitt***

# Appendix II

***Apropos the question of the position of Reich Minister and Chief of the Reich Chancellery: Observations from the standpoint of constitutional law.***[1]

I can only discuss this theme as a specialist in constitutional law and political theory who knew the Hitler regime from the inside and observed its development, but who deliberately kept his distance from the real center of power

1. [Ed.] *Staatsrechtliche Bemerkungen zu der mir gestellten Frage: Die Stellung des Reichsministers und Chefs der Reichskanzlei* (April 28, 1947). Schmitt prefaced his answer to this question with an outline or "synopsis," as he called it. Since it corresponds to the subtitles in his manuscript, it is not reprinted here. Of Schmitt's three written answers, this is the only one he chose to publish. See "Der Zugang zum Machthaber, ein zentrales verfassungsrechtliches Problem (1947)" in Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre*, Second Edition (Berlin: Duncker & Humblot 1973), pp. 430-437. Schmitt elaborated on his remarks in

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— from Hitler and his circle. I also had no personal or practical connection with the Reich Minister and Chief of the Reich Chancellery[2] and have not seen him since around 1936. I also did not know his state secretaries or adjutants. I did meet Kritzinger around 1932 and, as I remember, saw him only once thereafter, but did not engage him in conversation. I do not mean to say that I personally avoided the Reich Chancellery or its chief for the same reasons that I did, for example, Himmler or Goebbels. I did not consider him part of the essential circle of "loyalists" ["*verschworenen Gemeinschaft*"] that constituted the core of the Hitler regime. In this case, I was prompted by the general dread of power holders and their cohorts, and the abiding conviction that discussions with them are unproductive.

The business and organization of the Reich Chancellery is described in a book by the adjutant von Stutterheim (Duncker & Humblot Verlag, Berlin). I no longer remember the details, and the book was not important. My picture of the position of the Chief of the Reich Chancellery stems partly from general observations of the development of the regime and its institutions, partly from specific insight into the methods of legislation and the promulgation of laws and legal decisions. Material concerning conditions in the Hitler regime that has come to light in the Nuremberg Trials 1945/47 I know only partially and accidentally from isolated newspaper reports. For someone who knows this material, the following discussion will appear in part too general and too hypothetical, especially since I have no documents and am forced to rely on my memory of complicated events that took place many years ago.

### *I. The General Problem of Access to the Power Holder*

The more political power in a state is concentrated in a single office and in the hands of a single individual the more access to this office and this individual becomes the most important political, organizational and constitutional problem of this state. The struggle for access to the absolute monarch, to advise and inform him, to report directly to him, etc. is the essential content of the constitutional history of absolutism. Not only ministers, cabinet advisors, high dignitaries and adjutants have taken part in this struggle, but also confessors, servants and mistresses. The memoranda of Freiherr vom Stein concerning the reorganization of the Prussian state after 1807 primarily have to do with the sole right of ministers to report to the king and are directed against cabinet advisors. As "State Chancellor" (1810-1820), Hardenberg arranged that ministers had access to the king only through his office. Bismarck's *Memoirs* are full of comments on this problem. His letter of resignation of March 1890 contains no arguments about internal or external political matters, but is

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a dialogue on power and access to the power holder: *Gespräch über die Macht und den Zugang zum Machthaber* (Pfullingen: Gunther Neske Verlag, 1954). This dialogue was presented on Frankfurt radio on June 22, 1954. Notes in this discussion not designated by the editor are those Schmitt included only in his published text.

2. [Ed.] Hans Heinrich Lammers

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only concerned with the ostensibly purely formal reference to the cabinet order of 1852, which placed the Prussian ministerial president between the king and his other ministers, thus limiting the right of reporting directly to the king, whereas Wilhelm II claimed the right to consult with whomever he pleased and to receive reports directly from them. The history of any "personal regime" in any country offers many similar examples. I mention this only to emphasize the breadth as well as the difficulty of this question of access to the power holder.

*II. Organizational Effects of the Concentration of Power in the Hitler Regime*

Owing to the most extreme concentration of all power in Hitler's hands, the question of access to him became the most important internal political problem of the German Reich. Such a concentration of all power in the hands of a single individual, who presumed to govern every detail of a modern industrial state with 70 million inhabitants and to personally direct every detail of a modern total war, in general surpassed all known examples of a "personal regime" and in particular the most famous examples in the last century of European history — Napoleon III and Wilhelm II. The significance of those closest to Hitler accordingly surpassed those in comparable positions in these other cases. Hitler's chauffeurs became high dignitaries of the regime and were given ranks never conferred on Napoleon III's coachmen or Wilhelm II's drivers. A *Gauleiter* [Nazi area commander] with access to Hitler was politically more important than a Reich Minister who did not see his head of state for a year. All preconceptions of an ordered and calculable chain of responsibility stop here. Nevertheless, there was need for certain procedural forms and a certain order for getting the great mass of things done.

Hitler's personal position of power entailed an enormous claim to omnipotence as well as omniscience. The omnipotence was largely a fact and to a great extent effective, whereas the omniscience was sheer fiction. Thus the first practical question was who provided the omnipotent Führer with the material to help him make up his mind and make his decisions — whoever determined from incoming material what should meet the Führer's eye also determined what should and should not be dealt with. The second question had to do with that other part of getting things done — passing on orders and decisions to the offices and individuals that would carry them out. This question is particularly important because there were no clearly determined forms for the so-called *Führerbefehl*, and the orders were very often brief and abrupt. The practical transformation of a power holder's orders by a modern bureaucratic apparatus is not just a matter of linguistic style. It substantively influences the type and means of effective execution, particularly owing to the legal power of published norms in the form of statutes.

The higher Hitler and his personal entourage rose, the lower sank the Reich Ministers not included in this privileged group. They became mere administrators. After 1937 the Reich cabinet no longer met. Between the apex

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of political power and the formerly highest positions now in decline appeared a vacuum that had to be filled by a new "super-ministerial" structure through which the highly personal character of this type of power could be exercised. Whatever it was called, it had of necessity to consist of highly personal staffs — not agencies in the sense of rational and technical competence. The usual and in a sense typical term for such was "chancellery." For example, even the High Command of the Armed Forces was only a chancellery in this sense. The most important chancelleries corresponded to the three "pillars" of the regime: the party, the military and the state. The "Chancellery of the Führer" and the "Chancellery of the President" were not without importance, but the Chancellery of the Party, the High Command and the Reich Chancellery were the three links between the personal center of power and the three enormous, thoroughly-organized "machines" or mechanisms of command — the three giant mediators to and from the center.

The Reich Minister and Chief of the Reich Chancellery controlled the connection between the state and the sole bearer of power. This was the basis of his extraordinary position. The title "Reich Minister" is of secondary interest. The Chief of the Party Chancellery, Martin Bormann, was to my knowledge not a Reich Minister but only "on a par with a Reich Minister." He of course sought to become one, and perhaps he did; in any case, his practical and political influence was no less than that of a Reich Minister in the full sense of the title. The fact that the Chief of the Chancellery of the President was only a "State Minister" is also of secondary importance, as is the fact that the official or officious explanations for it were that his duties had to do with other states.

According to the basic principles of the Hitler regime, the administrative apparatus designated as the "state" was secondary to the party. Nevertheless, this state apparatus was still the essential executive branch of the government responsible for guaranteeing the actual functioning of the state and was in practice more important than the party in fulfilling the enormous administrative tasks of the war. That was apparent in all important areas, such as food production and distribution. The governmental traditions of all German states still had far greater power to regulate and execute than the overweening apparatus of the party. In spite of their degradation and mishandling by the party, state and local officials maintained the civil sector of the war.

With respect to the specific tasks of the state, the Chief of the Reich Chancellery was the link to the personal center of power. The focal point of his significance lay precisely in his relation to the state, which was also the basis of his position in the Reich Defense Council and its strong impact on the simplification of legislation. One had the impression that he sought, wherever possible, to rescue the earlier traditions of the state from their destruction by the party, at least his direction of the Deutsche Verwaltungsakademie was mostly interpreted in that way, especially since he put Dr. Hans Peters in charge of the curriculum — an administrative lawyer who was the former provincial deputy of the [Catholic] Center Party and not a member of the Nazi Party. (Today he

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occupies a prominent place in German public life). The Chief of the Reich Chancellery was also coeditor of several journals of public law in which articles of some quality would occasionally appear. But the internal contradictions between Hitler's methods of government and the traditions of a bureaucratic state meant that all efforts to rescue them from Hitler's destructive power at once played into his hands and made these traditions more pliable. I am not speaking here either of the personal feelings or emotional conflicts of the Reich Minister, which I cannot judge, but of the inner contradictions of the situation.

### *III. Toward a Formal Definition of the Position of the Chief of the Reich Chancellery*

Owing to its relation to the state, the super-ministerial position of the Chief of the Reich Chancellery had a certain obligation in terms of the functioning of public authorities to adhere to forms and norms and therewith also to a certain legality of methods (the word "legality" is used here in the French and German sense and cannot be simply equated with the English meaning). Legality is the functional *modus* of every state bureaucracy. Thus there was the necessity of at least an external legality even at that point where the Hitler regime came in contact with the great command structure of the "state," but not in the Party Chancellery and also not in the office of the High Command. This obligation to observe certain forms was strongest when it came to making public certain laws and ordinances in the *Reichsgesetzblatt*. For a jurist experienced in constitutional law, these statutes were a fund of valuable information.

Of course, more characteristic of such a personalistic system were secret orders and secret laws, of which I heard but never saw. Nevertheless, as a constitutional jurist I understood clearly their basic significance — they were a key to the essential *arcana* of the Hitler system. I also do not know if and to what extent this matter has been factually examined and clarified from a systematic juridical standpoint in the trials that have taken place thus far. The constitutional problem has been dealt with in a few partially interesting articles; the most important, by Prof. Otto Koellreutter (Munich), appeared around 1942/43 in the *Verwaltungsarchiv*.[3] It is not without courage. If I remember correctly, the Chief of the Reich Chancellery was editor of the *Verwaltungsarchiv* and had some relation to Prof. Koellreutter. I do not know whether he also had anything to do with the publication of this article, nor whether his office had anything to do with secret laws and orders.

Orders published in the *Reichsgesetzblatt* have two distinguishing features, both of which were particularly evident in the Chief of the Reich Chancellery:

1. *The Cosigning of Hitler's Orders*. In such a highly personalistic system the ministerial countersigning of orders of the head of state naturally had a different

3. The reference is to Koellreutter's article on law and judges in England and Germany. Cf. *Verwaltungsarchiv*, Vol. 47 (Berlin, 1942), in particular the passage on p. 231 concerning the demand of a public announcement of all legal norms (as opposed to "constitutional law in a vault").

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meaning than in a constitutional framework. Thus one no longer spoke of the "countersigning"[*Gegenzeichnung*] but of the cosigning [*Mitzeichnung*] of Hitler's orders by Reich Ministers (or State Secretaries) and construed this cosigning as witness to Hitler's sole responsibility (for [their] own preparation, authentic promulgation and proper execution). Outwardly the cosignature appeared as a countersignature in the publications of the *Reichsgesetzblatt*. In the course of this development interesting anomalies arose. Sometimes Hitler's name appears alone — without a cosignature — under a promulgation. From another perspective, however, were one to compile a statistic of the cosignatures of the Reich Ministers and State Secretaries in the *Reichsgesetzblatt* from 1933 to 1945, I suspect that the name of the Chief of the Reich Chancellery appeared more frequently with the growing concentration of power, while the names of the other Reich Ministers accordingly receded. Without having the *Reichsgesetzblatt* in hand, I cannot verify this presumption. Particularly interesting would be the question of who cosigned extraordinary orders and resolutions, for example, the Reichstag resolution of April 27(?), 1942 that recognized Hitler's right to deviate from existing laws with respect to the legitimately acquired rights of officials; or Hitler's independent extension on May 10(?), 1942 of the Enabling Act of March 23, 1933 (which had been extended by Reichstag resolutions in 1937 and 1938).[4]

2. *The Formation of a Specific New Concept: "Führer Decree."* In the general disorder of the various procedures for establishing laws — a law in the sense of a Reichstag resolution or of so-called governmental laws on the basis of the Enabling Act of March 23, 1933; various types of statutory regulations with the force of law — there developed after 1938/39 a specific concept of "Führer Decree" for fundamental organizational or other kinds of orders. Previously (and still many times thereafter) the word "decree" was used for orders in administration or in military areas (for conferring orders, etc.). Together with these usages, however, a specific concept of "decree" developed as an expression of Hitler's paramount power over everything and particularly over all other forms of establishing law. That can probably be proved from an examination of the last issues of the *Reichsgesetzblatt*. The "Führer Decree" in this special sense had a higher authority than all other legal determinations. Officially, of course, any "Führer Decree" surpassed everything else. Nevertheless, the concept already contained the basis of a formal distinction. But it is of interest that such "Führer Decrees" were cosigned by the Chief of the Reich Chancellery when they appeared in the *Reichsgesetzblatt*. From memory I cannot give specific examples. I remember only the rudiments of this development. They were a symptom of the growing power position of the Chief of the Reich Chancellery.

4. This concerns the decree of the Führer with respect to the governmental legislation of May 10, 1943, in *Reichsgesetzblatt*, I, p. 295. On this decree, see Gerhard Wacke, *Zeitschrift für die gesamte Staatswissenschaft* (1944), pp. 273-303.

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*IV. The Abnormality and Incalculability of all Developments within the Hitler Regime*

In examining all such rudiments of new forms or institutions, it should be noted that Hitler had only the deepest hatred for any stipulations through forms or even institutions and that a ruffling of his brow would have been enough to begin all over again. His deliberate subjectiveness and therewith the fundamental abnormality of his regime is really unprecedented and incomparable. The head of the Roman Catholic Church, the Pope, is infallible according to the dogma of this Church, but his infallibility is nevertheless clearly limited to general determinations and its exercise is bound to the most distinct and transparent forms (*ex cathedra*). By comparison, Hitler decreed general and individual orders of all kinds. He could decree laws, dissolve marriages, impose punishment or withdraw parental authority as he wished, and could do so openly or secretly, verbally or in writing, with reason or as a passing fancy, so that fundamentally no one could control a "Führer Decree." The Pope, as the infallible head of the Roman Church, does not name his successor. According to the praxis of more than a thousand years and canonical doctrine, he can only regulate the method for the determination of his successor in a general way. Hitler, however, named his own successor on September 1, 1939 as though it was the most natural thing in the world; and, I fear, very few in Germany gave any thought to this exorbitant constitutional event. On the other hand, there were peculiar concerns about formal legalizations, like the multiple extensions of the Enabling Act of March 23, 1933 (1937, 1938) that culminated in the constitutionally absurd situation in May 1942 when this Act was extended by Hitler himself.

The Reich Chancellery was, so to speak, a vertex of such abnormalities and internal contradictions. This resulted from its singular position in general and the particularity of its "super-ministerial" character within the regime. Another result was that this "super-ministerial" position had no real place, such as a Ministerial President or State Chancellor (like Hardenberg) would have in any other regime, only an intermediary link between a head of state rising to absolute heights and a series of degraded departmental heads sinking to mere administrators while retaining the former title and position of Reich Minister. In this peculiar intermediary position the Chief of the Reich Chancellery became deeply embroiled in the fundamental abnormality of the whole system — a system that knew no binding forms and institutions, in which everything it did or announced was always "subject to change." The fundamental irreconcilability of the omnipotence of the Führer and the legalizing order of the state was thus perhaps most obvious in the position of the Chief of the Reich Chancellery.

*V. In the Anteroom of Power*[5]

The struggle for access to the power holder is especially intense, revealing the dialectic of power and powerlessness. We must first grasp this state

5. [Ed.] This section is not part of the written answer Schmitt handed to Kempner in 1947. It appeared in remarks published as an epilogue to "Der Zugang zum

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of affairs realistically — without rhetoric or sentimentality, without cynicism or nihilism. To this end I will illustrate the problem with two examples.

The first example is a document of constitutional history: Bismarck's resignation of March 1890, which is treated fully in the third volume of his *Memoirs*. It is in both tone and form completely consistent with the considered opinion of a master of statecraft. It was Bismarck's last official act, consciously conceived and fashioned as a document for posterity. The old, experienced chancellor, the creator of the Reich, took issue with his inexperienced successor, the young king and kaiser Wilhelm II. There were many substantive conflicts and differences of opinion between the two concerning domestic and foreign policy. But the core of the resignation, the salient point, is something purely formal — the dispute over the question of how the chancellor should inform himself and how the king and kaiser should inform himself. In this regard Bismarck demanded complete freedom concerning with whom he could confer officially and socialize unofficially. However, he refused the right of the king and kaiser to hear the report of a minister if the minister-president — Bismarck — was not present. Thus the problem of reporting directly to the king became the key to Bismarck's resignation, and with it began the tragedy of the Second Reich. The problem of reporting directly to the king is the core problem of every monarchy in general because it is the problem of the access to the pinnacle of power. Freiherr vom Stein was also exhausted in the struggle against secret cells in the cabinet. Even a Bismarck could not get around the old and eternal problem of access to the top.

We take our second example from Schiller's dramatic poem, *Don Carlos*. Here a great dramatist proved his insight into the essence of power. The action of the drama is concerned with the question: who has direct access to the king, to the absolute monarch, Philip II? Whoever has direct access to the king partly shares his power. Previously the father-confessor, Domingo, and the general, the Duke of Alba, had occupied the anteroom of power and blocked access to the king. Now a third player appears on the scene, the Marquis Posa, and the other two immediately recognize the danger. At the end of the third act the drama reaches the climax of its tension when, in the last line, the king commands: The knight, the Marquis Posa, will in the future be admitted unannounced! This has a great dramatic effect not only upon the audience but also upon all the performers. "That is really much," says Don Carlos, when he hears it, "truly a great deal"; and the father-confessor Domingo says in a quavering voice to the Duke of Alba: "Our times are past." After this climax there is a sudden turn to the tragic — the turning-point of great drama. The fact that he was successful in gaining access to the power holder proved to be the undoing of the ill-starred Marquis Posa. We don't know if he would have been able to hold his position with the king or what he would have done with the father-confessor and the general.

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Machthaber, ein zentrales verfassungsrechtliches Problem (1947)," *op. cit.*, pp. 438-439, mentioned in the first note to this answer. The title is from Schmitt's comments on his dialogue published in *Die Zeit*, Vol. 9, No.30 (July 29, 1954).

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# Appendix III

***Reply to the accusation: "You collaborated in the preparation of wars of aggression and therewith were party to criminal offenses at decisive points."***[1]

The crux of my reply is that I had no part in it. I will begin with the juridical standpoint of the Nuremberg decision of the International Military Court (September 30-0ctober 1, 1946) and end with a few comments on other ways of thinking about and possibilities of answering the accusation. Crucial for a juridical consideration is that the extraordinarily broad designations — "crimes against peace," "war crimes," and "crimes against humanity" — have been more precisely determined by the Nuremberg decision with respect to the actual state of affairs and the definition of the perpetrators. What constitutes criminal offenses accordingly fall under some or all of the four points of the charges at the Nuremberg Trials, namely: 1) joint planning; 2) the planning of war; 3) war crimes in the former and traditional sense of international law; and 4) crimes against humanity.

I presume I do not need to repeat, that is, I presume here familiarity with the written statements I have already made in answer to the question of March 17, 1947 and in my explanation of the "theoretical foundation of Hitler's policy of conquest" of April 18, 1947. The following comments contain some additions to the content of my previous statements, still others might become necessary owing to the chronological and substantive extent of the investigation. But I have attempted to be complete.

As regards me personally, suffice to say here that I cannot be accused of ever having had any criminal impulses or motives, of ever having consciously participated in a criminal act, specifically with respect to the circumstances here under consideration.

The following outcomes of the Nuremberg Trials are precedents for the evaluation and judgment of my conduct: Of the defendants at the Nuremberg Trials, [Ernst] Kaltenbrunner, [Hans] Frank, [Julius] Streicher, [Baldur von] Schirach and [Martin] Bormann were *not once accused* of point 2 (the planning of war); [Hjalmar] Schacht and [Fritz von] Pappen *not once accused* of points 3 and 4 (war crimes in the traditional sense and crimes against humanity). Kaltenbrunner, Frank, [Wilhelm] Frick, Streicher, Schacht, [Admiral Karl] Dönitz, Schirach, [Fritz] Sauckel, Bormann, Papen, [Arthur] Seyss-Inquart, [Albert] Speer and [Hans] Fritzsche were *declared not guilty* of point 1 (joint planning); Schacht, Sauckel, Pappen, Speer and Fritzsche were *declared not guilty* of point 2 (the planning of war); and Hess was *declared not guilty* of points 3 and 4 (war crimes in the traditional sense and crimes against humanity).

1. [Ed.] *Beantwortung des Vorwurfs: Sie haben an der Vorbereitung des Angriffskrieges und damit verbundenen Straftaten an entscheiden der Stelle mitgewirkt* (April 28, 1947).

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When I compare my position and activities, whether from 1935 to 1945 or even earlier, with the position and activities of these major defendents, then my answer is clear without any further elaborations or closely-reasoned arguments. I do not even remotely fall under the criteria that the Nuremberg decision developed with respect to "joint planning." In my case, there was no "direct participation in any plan to conduct the war"; not once was even Kaltenbrunner charged with this kind of participation (see p. 133 of the text of the decision put at my disposal). I also had no "close association" with such a plan; and not even Frank (p. 138), Streicher (p. 143) or Sauckel (p. 162) could be so charged. I did not participate in any discussions in which Hitler developed his plans of aggression (pp. 141, 152 and 183) and, I might add, I did not even know such plans were being made. I did not belong to Hitler's "inner circle"; neither, according to the decision, did Streicher (p. 143) or Sauckel (p. 162). What was ultimately said of Fritzsche could well also be said of me: "He was never considered important enough to be drawn into the planning discussions which led to wars of aggression." I never took part in press conferences and received only those "confidential notifications" provided other members of the Law Faculty irrespective of party membership. The [Nuremberg] Court found it significant that Fritzsche never spoke personally with Hitler (p. 189). Not only did I never speak with Hitler, I never spoke with Goebbels, the Press Secretary Dietrich, or the state secretaries or other high officials of the Propaganda Ministry. I also had no "close or direct" connection with any propaganda activities.

I can here omit my activities prior to entering the party (May 1, 1933). Until the spring of 1933 — specifically, until the announcement of the Enabling Act on March 24, 1933 — I had no direct or indirect connection or even contact with any noteworthy Nazis, never exchanged a word with one. It was not after January 30, 1933 but only after the announcement of the Enabling Act on March 24, 1933 that I asked myself what position I, as a constitutional jurist, should take with respect to the transformation of Germany into a one-party state. After consulting with friends — not with Nazis — I applied for membership in the party through the appropriate local group in my then residence in Cologne on May 1, 1933. I received my membership book in the spring of 1937 [?]; the number of members was then over 2,000,000.

After May 1, 1933, my position and activities were of three types. I was 1) a member of the Prussian State Council from July 1933 to 1945; 2) director of the faculty group of the Nazi Juristenbund from the fall of 1933 to the fall of 1936, and for one year (1935) of its academic office; 3) since 1916 a *Privatdozent* and from 1921 to 1945 respectively: Professor of Public Law (constitutional law, international law, administrative law, and general political science). I need not discuss my work in the Akademie für Deutsches Recht because, to my knowledge, none of the many legal scholars associated with it have been charged with anything. I held no administrative position in the Akademie.

re 1). The position of a member of the Prussian State Council does not as

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such justify an accusation of collaboration in war crimes, not only because earlier members of the Prussian State Council were respected figures in public life, such as Bishop Berling or Furtwängler and Gründgens, but also because this council, as a Prussian institution, had no direct connection with matters of the Reich. As far as I know, it was neither entrusted with important political tasks nor informed of Hitler's secret plans. Its activity was concerned with practical questions of Prussian administration and organization. Its main achievement was the Prussian municipal laws of December 1933 (the community law and the community finance law). Even this activity already came to an end in the spring of 1936. Thereafter, the council was not convened again. Its last meeting took place, if I remember correctly, in March 1936. When its president, Goering, was put in charge of the Four-Year Plan in October 1936, the Prussian State Council was no longer a functioning organization.

There were many reasons for the rapid decline of an institution with such an apparently illustrious beginning. The most obvious was that Prussia was no longer a state but only an administrative complex, and that a Prussian State Council could only have continued as an administrative organ. There is no doubt about that. But in a political system like Hitler's, the only really important thing is Hitler's very personal behavior and attitude, and the fact that he conspicuously shunned the opening ceremony of the Prussian State Council in September 1933 was seen by the party as a degradation. Fundamentally, Goering's only interests in the institution were nepotism and money. The real work was done by the Prussian Finance Minister, Professor Dr. Johannes Popitz. As a Prussian "ministerial" type he aroused suspicion and envy both from the party and from every anti-Prussian south German. Something so administratively sound as the municipal laws of December 1933 were just the kind of thing to make Frick and others in the party want to control the whole matter with a Reich law and thereby take it out of Prussian hands. As a matter of fact, the German municipal order of 1935 was passed relatively quickly. Nothing came of the Prussian municipal order that was planned and discussed in the council.

I was a member of the Prussian State Council since its founding in June 1933 and initially had great interest in this institution. My friend Popitz and I thought it had great possibilities and hoped that it could become a forum for practical discussion of administrative questions and would thereby constitute a counterweight to the party. From the beginning, however, the institution suffered from internal division owing to the problematic personality of Goering. On the one hand, Popitz and others of us conceived the council as a place for getting things done, for qualified work to solve specific problems; on the other, with Goering it could become nothing but an empty showpiece. I personally worked on the municipal laws of December 1933, but do not see that as collaborating in the preparation of a war of aggression.

re 2). The faculty group of the Nazi Juristenbund that I headed from the end of 1933 to 1936 was one of Frank's organizations. With its approximately

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400 members, this faculty group had no great influence, since it was part of a mass system (70,000 to 100,000 members) of activities and quotas. Having applied for membership in the party only in May 1933, I was not fully valid in the eyes of the older party members and group leaders. My position was completely dependent on the personal interest Frank took in me, often very demonstratively. The atmosphere of this Juristenbund was alien to me. But Frank, who had great sympathy for me, kept me on and still in 1935 sought to hold me by establishing a scholarly office, even though it was by then clear that I did not belong. I resigned my office at the end of October 1936. At that point, Frank made no further efforts to hold me because Heydrich had personally warned him about me. Frank's position was not strong enough to protect me from the SS, even had he wanted to. My public defamation by the *Schwarze Korps* occurred in December 1936, more than a month after my resignation. The Hitler regime was at the pinnacle of its domestic and foreign policy successes in 1936, most impressively demonstrated in the participation of all nations in the Berlin Olympics.

Frank was found not guilty of point 1 (joint planning) because he was "not close enough" to the planning of a war of aggression (p. 138 of the decision). He was never accused of point 2 (the planning of war). He was convicted of point 3 (war crimes) and point 4 (crimes against humanity) solely on the basis of his activities as Governor-General in occupied Poland from 1939 to 1945. I did not work with him after the end of 1936 and, as I indicated in my statement of April 18, 1947, my personal relations with him were slight.

re 3). In my capacity as Professor of Public Law I was a scholar, a teacher and a publicist. My scholarly research does not fall under the points of accusation. As far as my activities as a teacher are concerned, I can refer to the fact that even Baldur von Schirach was found not guilty of point 1 (joint planning) "in spite of the belligerent activities of the Hitler Youth" (p. 160 of the decision). He was not once accused of point 2 (the planning of war) or point 3 (war crimes). He was found guilty of point 4 (crimes against humanity) only because of his activity as a *Gauleiter*, Reich Governor and Defense Commissar of Justice in Vienna after 1940. In connection with my activities as a teacher, it is worth mentioning that I neither saw Schirach, the leader of the Hitler Youth, nor his successor, neither did I have any conversations with the leader of the league of students nor with the leader of the league of instructors or with the leaders of other such organizations. Finally, with regard to my activities as a publicist, as I remember even Fritzsche was found not guilty of point 1 (joint planning), point 3 (war crimes) and point 4 (crimes against humanity) for reasons already mentioned, i.e., that he was not considered important enough to be included in planning conferences, had never spoken with Hitler and was not informed of the decisions made.

I have been accused of participating in preparations for wars of aggression and therewith of having been connected with criminal acts "at decisive points." With respect to my activities as a member of the Prussian State

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Council and in the Juristenbund, the preceding statements make it clear that neither position put me at any decisive point. With respect to my position as a professor, I was certainly a big name. After the appearance of my *Verfassungslehre* (1928), I became one of the most well-known professors of law in Germany and in Europe. But such a position was not "decisive," not even as the basis for making decisive contacts. This is no place to expand upon the general situation of a university professor in a totalitarian system. Enough to say here that it was impossible for a chair in jurisprudence to be regarded as a decisive position or as a basis for exercising a decisive influence at decisive points in Hitler's totalitarian system, given its prevailing conceptions of science, education and jurisprudence. Such a position would never have been considered for initiation into Hitler's secret planning. Whether that is also true for chairs in chemistry, physics, or similar disciplines with more relevance to the technology of war is another question. However, in the case of a professor of jurisprudence, even a famous scholar of public law, the answer is clear, namely that he sought no contact with decisive positions and had no connection with them.

Theories and ideas do have influence, but this influence is not traceable to "decisive points." The effects of spoken, written and printed words are various and incalculable. Since the accusation against me also concerns the other and further effects of my theories and formulations, I would in conclusion like to address this aspect of the question with a few general comments.

When an author makes public the results of his research and thinking, his intent is as scientific as his intellectual *habitus* is scholarly — the purpose is to further knowledge and the exchange of opinion. It is well-known that my publications have always greatly stimulated both. But many listeners and readers do not respond to theories and formulations in a scholarly way, but automatically and unreflectively link them with practical matters and their momentary goals and interests. This is particularly dangerous with theories, theses and formulations of international law, constitutional law and politics. In times of peace and security, specialists in such disciplines are allowed the greatest freedom of thought and are not troubled with the question of the possible effects of their opinions. In times of open or latent civil war, there is the danger that every open and public word will at once be changed into a propaganda slogan or fall victim to the nihilistic chaos of ravaged concepts.

I have had extensive experience in this regard and have paid the price for it. During the European wars and civil wars of the 16th and 17th centuries the founders of my discipline, Jean Bodin and Thomas Hobbes, had the same experience. Translated into the language of modern technology, one might formulate this experience in the following way: Every amplification is a change of meaning and usually also a falsification of it. That is actually the basis on which I am being judged. Aside from juridical questions, however, there are many other historical, sociological and moral-ethical questions involved. Precisely because of this, there is also a limit to what can be ascertained with the means of justice and judicial procedure. I am not saying this to avoid justice. I know all

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too well that beyond the limits of justice there is no area of irresponsibility or perhaps safety. In times like the present, however, the opposite is the case. I am enough of a jurist to know the inestimable value of justice and judicial procedure. Legal responsibility rests on definable concepts and an orderly procedure, whereas the determination of non-judicial responsibility is often very wild and chaotic.

Even with this in mind, the attempt to gauge the effect of theses and opinions concerns the ticklish problem of determining purely psychic causes for the actions of independent and responsible individuals. It further concerns the question of the fate of books and authors. One can make Jean Bodin, the originator of the modern concept of sovereignty, responsible for everything sinister that has happened in the last three hundred years. There are historians who claim that Rousseau was the real instigator of all the crimes committed during the Jacobin terror in France. To take another example from my own discipline, constitutional law, it is certainly conceivable that one could make Calhoun, the greatest jurist of the Confederacy, responsible for all the misery and cruelty of the War Between the States.

Countless other examples of such "ideological" responsibility could be cited, also for the present. In fact, every author has a great responsibility, and we must all account for the idle words we utter. The question is only to what extent such ideological responsibility should be utilized in the form and course of a criminal proceeding and to what extent the judge can be required to immerse himself in my books and articles and the controversies surrounding them in order to gain an accurate picture of my scholarly personality and to decide on the truth or error, usefulness or harmfulness, correctness or falsehood of theories and opinions. According to the Nuremberg decision (p. 65), not even the political opinions expressed in Hitler's *Mein Kampf* constitute criminal planning as such. This raises the question of the extent to which ideologies and educational opinions can be adjudicated. The question becomes not simpler but more difficult in an age of technology and mass communication, because it is linked with a special power factor — the psycho-technical machinery of modern propaganda, whose loudspeakers can make or break myths from day to day. Once warned, it was precisely this amplification that I sought to avoid.

In conclusion I want to say that I take the question of my responsibility very seriously in every respect, and repeat that I do not wish to use the question of what is or is not subject to adjudication as an excuse or a way out. But the distinction exists nevertheless, and is evident in various ways and in various areas of law and justice. It is much discussed in international law and constitutional law, and is at least latent in every other area, criminal law and procedure in particular. It is in the nature of the matter itself and, also in my case, cannot simply be dismissed because that for which I am being held responsible is essentially only that which I have written — scholarly treatises, which have resulted in many fruitful scholarly debates.

***Carl Schmitt***

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# *Ex Captivitate Salus**

## Carl Schmitt

I have experienced the tribulations of fate.
Victories and defeats, revolutions and restorations.
Inflations and deflations, bombings,
Defamations, broken regimes and broken pipes,
Hunger and cold, internment and solitary confinement.
Through it all I have passed,
And through me it all has passed.

I am acquainted with the abundant varieties of terror,
The terror from above and the terror from below,
Terror on the land and terror from the air,
Terror legal and extra-legal,
Brown, red and checkered terror,
And worst of all, the terror none dares to name.
I am acquainted with them all and know their grip.

I know the chanting choirs of power and law,
The shrieking voices and mean falsifiers of the regime,
The black lists with many names.
And the cardfiles of the persecutors.

What now should I sing? The hymn of *placebo?*
Should I abandon problems and envy plants and animals?
Tremble in panic in the circle of the paniscs?
Fortunate as the gnat, who dances to his own tune?

Thrice I sat in the belly of the whale.
I confronted suicide at the hand of the executioner.
Yet the sheltering word of the sibylline poets embraced me,
And a holy man from the East opened to me the gates of deliverance.

Child of this consecration, tremble not —
Harken and endure!

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* This poem, under the title "Gesang des Sechzigjährigen" [Song of the Sexagenarian"], appears at the end of Schmitt's *Ex Captivate Salus: Erfahrungen der Zeit 1945-47* (Cologne: Greven Verlag, 1950). Translated by G. L. Ulmen.



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# *Schuldt on Schmitt the Poet**

You ask me to cast "the poet's eye" over your translation of Schmitt's poem. Since I can't see how to make it more poetic, I have employed myself at making it less so, which is my inclination anyhow. The "regimes" always have to be rendered in the plural, for that is precisely Schmitt's point: they come and go and happen to be left, right or whatever and it doesn't really matter too much, and that is about one half the defense he puts up for having aided and abetted and praised the NS-regime, whereas if the discussion were narrowed down to just this one regime and the change that brought it upon us, he'd have something to answer for.

"Bombed-out apartments" (rather than "bombings") because that entire recital is the sufferings of civilians, passive victims: a striking change of perspective in the man who had set himself up for decades as the prophet of the strong man. My "black lists" line has bad rhythm. Maybe it's better to say "the black lists with so many names" or "with all those names" or best: "the black lists rife with names." All of it, incidentally, is kind of funny semantically in German too, for what is a black list if not names?

*Escavessades* best retained as such, because it clearly and fairly documents the author's high-falutin mannerisms and eagerness to be taken for a Guard's officer. It means (in "horsemanship") *sharp jolts imparted by bridle to bit*. The word is (and was in Schmitt's time) quite as unintelligible in German as it is in English, and faded from French dictionaries with the Great War. I'd be loath to sacrifice it to *tribulations*, vicissitudes and their ilk.

*Sohn dieser Weihe* (Child of this consecration): with Schmitt's rank Catholicism, I have little doubt that the flavor to him was one of ordainment or taking orders, though the plain priesterly rank was probably all he had in mind and it does not require consecration, reserved, if I am not mistaken, for bishopry, but of course the idea or semantic structure here is not one of making a priest but graduating in life or graduating *ecavessades* . . . in short, an initiation, and I think the poem will be little damaged by skipping the Roman Catholic connotation here and otherwise much improved by not contorting it with vague and out-of-place sounding things like *initiation ceremony* or the plain *consecration* or whatever. The paniscs [ πανισκος ] are little or inferior Pans, invented later. And then there is the gnat, which could be leaping off "toward its within," if you like that better.

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* The following is an excerpt from a letter (dated: Hamburg, 9/13/87) addressed to Ulmen. It was accompanied by Schuldt's emended translation of Schmitt's poem. Although the letter was not written to be published, the editors decided that it was more revealing with respect to Schmitt's intent to print these observations alongside Ulmen's translation, rather than to publish Schuldt's version alone.



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# *Heidegger and Schmitt: The Bottom Line**

Freiburg i. Br., August 22, 1933

Respected Herr Schmitt!

Thank you for sending me your book, the Second Edition of which I know already, and which contains an approach of extraordinary significance. I would very much appreciate the opportunity to discuss it with you face to face.

Your quote from Heraclitus appealed to me particularly, because you did not forget *basileus* [king], which gives definitive meaning to the whole maxim if one interprets it completely. I have had such an interpretation set down for years, with respect to the concept of truth — the *edeize* [proves] and *epoiese* [makes] which appear in Fragment 53.

But now I myself am in the middle of *polémios* [war] and all literary projects must take second place.

Today I would just like to say that I am hoping to get your decisive cooperation when it comes to reconstituting the Law Faculty as a whole from within in accordance with its scientific and educational program.

Unfortunately, things are very depressing here. The gathering of the spiritual forces, which should bring about what is to come, is becoming more urgent every day.

For today I close with friendly greetings.

Heil Hitler!
Yours Heidegger**

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* [Ed.] Before Hitler's assumption of power, Heidegger and Schmitt had had no contact. After both joined the Nazi Party, it was almost natural for the regime's two most prominent intellectuals to establish some relation. Schmitt initiated the relation by sending a copy of *The Concept of the Political* to Heidegger. In the Third Edition, published after the Nazi takeover, Schmitt modified the beginning in order to ingratiate himself to the Nazis. He thus emphasized the concept of war and included a note on Heraclitus. Since this note does not mention the king (*basileus*), probably Schmitt included an accompanying letter or perhaps inscribed the copy in which he quoted Heraclitus' Fragment 53: "War is the father of all things, the king of all things. Some he proves to be gods, others men; some he makes slaves, others free."

** "Freiburg i. Br., d. 22. August 33 — Sehr verehrter Herr Schmitt!/Ich danke Ihnen für die Übersendung Ihrer Schrift, die ich in der zweiten Auflage schon kenne und die einen Ansatz von der größten Tragweite enthält./Ich wünsche sehr, mit Ihnen darüber einmal mündlich sprechen zu können./An Ihrem Zitat von Heraklit hat mich ganz besonders gefreut, daß Sie den βασιλευς nicht vergessen haben, der dem ganzen Spruch erst seinen vollen Gehalt gibt, wenn man ihn ganz auslegt. Seit Jahren habe ich eine solche Auslegung mit Bezug auf den Wahrheitsbegriff bereit liegen — das εδειξε [erweist er] und εποιησε [läßt er werden] die in Frg. 53 vorkommen. Aber nun stehe ich selbst mitten im πολεμος und Literarisches muß zurücktreten./ Heute möchte ich Ihnen nur sagen, daß ich sehr auf Ihre entscheidende Mitarbeit hoffe, wenn es gilt, die juristische Fakultät im Ganzen nach ihrer wissenschaftlichen und erzieherischen Ausrichtung von Innen her neu aufzubauen./Hier ist es leider sehr trostlos. Die Sammlung der geistigen Kräfte, die das Kommende heraufführen sollen, wird immer dringender./ Für heute schließe ich mit freundlichen Grüßen./Heil Hitler!/Ihr Heidegger"



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# *The Source of the Tragic**

## Carl Schmitt

What is the source of the tragic? What is the source of that tragic action which gives life to tragedy? Once we recognize in the guilt of the queen and the figure of the avenger[1] two historical intrusions into the drama [of *Hamlet*], we confront the last and most difficult question: Should historical considerations be included in the discussion of a work of art?

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* "Die Quelle der Tragik," Chapter 3 of Schmitt, *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel* (Düsseldorf and Cologne: Eugen Diederichs Verlag, 1956), pp. 33-51. Translated by David Pan. The epigraph for Schmitt's essay is from Hamlet's Hecuba monologue in (II:ii): "Why these Players here draw water from eyes:/For Hecuba, why what is Hecuba to him, or he to Hecuba?/ What would he do and if he had my losse?/ His father murdred, and a Crowne bereft him," *Shakespeare's Hamlet: The First Quarto 1603*, Reproduced in facsimile from the copy in the Henry E. Huntington Library, Fourth Issue (San Marino, CA: The Huntington Library, 1964).

1. [Tr.] In Chapter 1, "The Tabu of the Queen," Schmitt recapitulates the critical debate centering on the guilt of the queen in the murder of Hamlet's father. Considering the question unresolvable, Schmitt provides an historical explanation for the ambiguity. He elucidates the concrete situation during the years 1600-1603, which saw the first production of *Hamlet* — a time when London and all England was anticipating the death of Queen Elizabeth, and her successor had not yet been decided. Most important to Schmitt is the background of this situation, which concerned Mary, Queen of Scots. Her husband, Henry Lord Darnley, the father of James, was murdered by her lover, the Earl of Bothwell, in February 1566. In May of the same year Mary Stuart married Bothwell. According to Schmitt, since James was the presumed successor to the throne, it was a tabu to establish the guilt of the mother for the murder of the father. Two supporters of James, the Earls of Southampton and Essex, were not only in disfavor with Queen Elizabeth but also patrons of Shakespeare's theater troupe, which was accordingly forced out of London. In order to regain a place for his plays in London, Shakespeare had to support James' bid for the throne. On this count, the queen in Hamlet had to be free of guilt. But in order to cater to the Protestant London audience, convinced of the Catholic Mary Stuart's guilt, the queen could not be portrayed as innocent. The combination of these two considerations dictated the queen's ambiguous status — the tabu of the queen.

In Chapter 2, "The Figure of the Avenger," Schmitt provides a similar explanation for Hamlet's indecisiveness — the distortion of the traditional figure of the avenger into a melancholic introvert. In Schmitt's view, James stood at the center of the religious conflict between Protestants and Catholics and thus provided the model which distorted the figure of the avenger, the traditional man of action, into a Hamlet, whose action is inhibited by his contemplation. He lists as sources for his thesis: Lillian Winstanley, *Hamlet and the Scottish Succession* (Cambridge: At the University Press, 1921); John Dover Wilson, *What happens in Hamlet* (1935), Third Edition (Cambridge: At the University Press, 1951); and Walter Benjamin, *The Origin of German Tragic Drama* (London: New Left Books, 1977).



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The generality of this question is somewhat disconcerting. The first difficulty is purely technical. Owing to an extreme division of labor, academic fields and disciplines have become overly specialized. Literary historians work with different materials and from different approaches than political historians. Shakespeare and his *Hamlet* belong to the realm of literary historians, while Mary Stuart and James I are the responsibilty of political historians. Consequently, Hamlet and James encounter each other only with great difficulty. The rift is too deep. Literary historians consider the source of a drama to be a literary source, either a precursor or a book which Shakespeare used: for *Julius Caesar*, Plutarch; or for *Hamlet*, the Nordic saga of *Saxo Grammaticus* in its 16th-century literary adaptations.

Another difficulty stems from the prevailing German philosophy of art and aesthetics. Its relation to the problem of the division of labor need not concern us here. Nevertheless, philosophers of art and teachers of aesthetics tend to understand the work of art as an autonomous creation unrelated to historical or sociological reality — something to be understood only on its own terms. To relate a great work of art to the actual politics of the time in which it was created would presumably obscure its purely aesthetic beauty and debase the intrinsic worth of artistic form. The source of the tragic then lies in the free and sovereign creative power of the writer.

Here we find sharp distinctions and fundamental divisions, boundaries and barriers of opposing approaches; complete value systems, which recognize only their own passports and certifications, validate only their own visas, allowing others neither entrance nor passage. We will attempt in our discussion of Shakespeare's *Hamlet* to avoid this dangerous fragmentation, to find a better approach. In so doing, we must bear in mind that these difficulties are exacerbated by the preconceptions of the German cultural tradition.

### *The Creative Freedom of the Writer*

In Germany we have become accustomed to look upon the writer as a genius who can create from whatever sources he chooses. In view of Shakespeare's presumed arbitrariness, the cult of genius which arose during the German *Sturm und Drang* of the 18th century has become a *credo* of the German philosophy of art. The creative freedom of the writer becomes thereby a defense of artistic freedom in general and a stronghold of subjectivity. If his genius so compels him, why should an artist not be able to utilize artistically whatever he wishes and in whatever manner he wishes, be it personal experience or that of others,

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books or newspaper articles? He enters into and transports the stuff of life into the totally other realm of the beautiful, where historical and sociological questions become tactless and tasteless. The old poetics spoke of "poetic license," which in German becomes an expression of the sovereignty of genius.

It is also significant that German aesthetic concepts are generally determined more by poetry than by drama. When discussing literature, we tend to think of a lyric poem more readily than a drama. The relation of a lyric poem to literary experience is something much different than the relation of tragedy to its mythical or historical sources. In this sense, the lyric poem has no source; it is occasioned by a subjective experience. One of our greatest and most form-conscious writers, Stefan George, says: Experience undergoes such a tranformation through art that it becomes meaningless for the artist himself, even as knowledge of this experience is for others more confusing than redeeming. That may be true for a lyric poem and may refute the pedants who attempt to garnish Goethe's love poems with his romantic experiences. But the freedom to create, which provides the lyric poet with such free play with respect to reality, cannot be conferred upon other types and forms of literary creation. The subjectivity of the lyric poet corresponds to a different type of creative freedom than that of the objectivity of the epic writer and the dramatist.

In Germany we have an image of the dramatist which, understandably, is drawn from the model of our great dramatic writers. Lessing, Goethe, Schiller, Grillparzer and Hebbel all wrote their dramas as books for publication. They sat at their writing tables or stood at their lecterns as "domestic workers" and delivered polished manuscripts to a publisher for an honorarium. The term "domestic worker" *(Heimarbeiter)* is not used here disparagingly; it is merely the proper designation of a sociological fact important for our problem and indispensible for our discussion, because Shakespeare's plays originated in a completely different manner. He wrote them not for posterity but for his concrete and immediate London public. Strictly speaking, one could say he did not write but rather composed them for a very specific audience. Not one of Shakespeare's plays anticipated spectators who had read it beforehand and recognized it from a published book.

All the above-mentioned German conceptions of art and the work of art, the drama and the dramatist prevent an unbiased view of Shakespeare and his work. Let us leave aside the debate about Shakespeare the person. One thing is certain: he was no "domestic worker" in the literary production of book-dramas. His plays originated in direct

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contact with the London court, the London public, and London actors. An intentional or unintentional referencing of contemporary events and persons arose quite naturally, whether as mere allusion or true reflection. In times of political tension and agitation it was unavoidable. We recognize this in our own situation and need only remind ourselves of a formula that has become quite common in the last few years: *All characters and events in this production are fictitious and any resemblance to real persons and events is purely coincidental.* I certainly do not mean to equate the author of *Hamlet* with contemporary producers of films and period plays. But the analogy of references to current events is revealing, and Shakespeare would certainly not have been averse to prefacing his dramas with such a statement.

All this not only contributes to our understanding of the psychology and sociology of the playwright, but also to the concept of drama and our question concerning the source of tragic action. It is here that the limits of the invention of the writer become clear. An author of plays to be immediately performed before a familiar audience not only stands in a psychological and sociological relation to this audience but also within a common public sphere. The assembled audience establishes through its concrete presence a public sphere which encompasses and incorporates the author, the director, the actors, and the audience itself. If the audience does not understand the action of the play, it simply does not remain engaged and the public sphere disintegrates or ends in a theatrical scandal.

Such a public sphere places a strict limit on the creative freedom of the playwright. Observance of this limit is guaranteed by the fact that the audience will not follow the events on stage; deviating too much from the audience's knowledge and expectations makes the process incomprehensible or meaningless. The knowledge of the audience is an essential factor of the theater. Even the dreams the dramatist weaves into his play must be those that could be dreamed by the spectators, with all the complications and vagaries of recent events. The creative freedom of the lyric writer as well as the epic writer and the novelist is unique. But the subjectivity and inspired fabrication of the dramatist is severely restricted both by the presence of the spectators and by the public sphere established by this presence.[2]

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2. Richard Tüngel, an experienced journalist, has written: "One of the essentials of dramatic effect is that the spectators know and understand more about what is happening or will happen on the stage. One could say that allowing the audience to

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One should not be fooled by the seemingly limitless freedom Shakespeare exercised with respect to his literary sources. He certainly took great liberties. One might even characterize him as "essentially anti-historical."[3] Yet his arbitrary utilization of literary sources is only the other side of a much firmer tie to his concrete London audience and its knowledge of contemporary reality. In historical dramas which presume a knowledge of past history the knowledge of the audience is incorporated differently than in dramas tied to current events. The historical drama identifies persons and events with familiar names and calls up certain conceptions and expectations relevant to the author's purpose. One of Jean Paul's expressions is applicable to this type of the spectators' historical knowledge: "When called up by writers, a familiar historical character — for example, Socrates or Caesar — enters like a prince and presupposes his *cognito*. A name is here a collection of situations." The effect is different, but no less forceful, when a person from contemporary history appears under a different name but is nonetheless immediately recognizable to the spectators. In this case, the transparent *incognito* heightens the tension and the participation of the knowing spectators. This is true for the character of Hamlet-James I. However, the knowledge of the spectators is not the only essential factor in the theater; it is not only the audience which pays attention to the observance of the rules of the game.

### *Play and Tragedy*

The theater itself is essentially play *(Spiel)*. The play is not only played out on stage; it is play in and of itself. Shakespeare's plays, in particular, are true plays: comic plays *(Lustspiele)* or tragic plays *(Trauerspiele)*. The play has its own sphere and creates a space for itself within which a certain freedom of literary materials as well as original situations reigns. Thus it creates its own field of play in both space and time. This makes possible the fiction of a completely self-contained, internally self-sufficient process. Thus Shakespeare's plays can be performed as pure play, without reference to any historical, philosophical or allegorical interpretations or other extraneous considerations. This is

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know more than the performers is one of the most effective techniques of dramatic art. Shakespeare made use of it in many of his dramas and comedies. It is very possible that the historical presence of the Hamlet drama — its allusion to the Scottish tragedy — had such an effect upon the audience at that time." See *Die Zeit*, No. 45 (November 6, 1952).

3. See the essay on Paul Ernst, "The Metaphysics of Tragedy," in Georg Lukács *Soul and Form* ( Cambridge, MA: MIT Press, 1974).

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true also for *Hamlet*, wherein most of the action and most of the scenes are pure play.[4]

I do not expect anyone to think of James I when Hamlet is on stage. I would also not take the measure of Shakespeare's Hamlet with the historical James I or the reverse. It would be absurd, after viewing a well-played performance of *Hamlet*, to be distracted by historical reminiscences. Nevertheless, we must distinguish between *Trauerspiel* and tragedy.[5] Unfortunately, we Germans have become accustomed to translate the word "tragedy" into *Trauerspiel*, thus eliminating the distinction. Shakespeares dramas, which end with the death of the hero, are called "tragedies"; even *Hamlet* is called a "tragical history" or a "tragedy." It is still necessary to distinguish and divorce *Trauerspiel* and tragedy, so as not to lose sight of the specific quality of the tragic, so that the seriousness of a genuine tragedy is not lost.

There is today an extensive philosophy and even theology of play. However, there has long been a genuine piety which understands itself and its earthly existence as a game of God, as in the evangelical hymn: "In Him all things find their purpose and aim; Even what man achieves is God's great game." With reference to the Cabbalists, Luther spoke of the game that God plays with the leviathan for several hours a day. A Lutheran theologian even took Shakespeare's drama for a "Wittenbergian play" and made Hamlet into one of "God's players."[6] Both Catholic and Protestant theologians quote Luther's translation of

4. In Otto Ludwig's *Dramatische Studien* he repeatedly emphasizes that a drama must be understood in terms of its "inner relationships," i.e., from within the drama itself. He is thus unrelenting in his criticism of Hegel, who was presumably too much of a sociologist to appreciate the process of a play in and of itself. Clearly irritated with the great philosopher-cum-sociologist, Ludwig cites what he calls "an almost comic example of Hegel's misunderstanding of the true nature of drama in his *Ästhetik* (Vol. I, p. 267)." From my point of view, I think Hegel is correct in arguing that Shakespeare (in *Macbeth*) conceded to King James by intentionally not mentioning the historical Macbeth's ancestral right to the throne and thereby making him into a common criminal. In response to Hegel's reasonable argument, Ludwig poses and answers a rhetorical question: "Can one even conceive of the idea that Shakespeare depicted Macbeth as a criminal in order to please King James? I cannot." In the context of German aesthetics in 1850, when Ludwig was writing, perhaps it was not possible. Today we can very easily conceive of it. Ludwig is a perfect example of the German cultural tradition — its conception of the dramatic playwright and its preconceived notions of Shakespeare the dramatist.

5. See my appendix on Walter Benjamin and German Tragic Drama.

6. "In the end God puts all the dolls back in the box and begins a new game with Fortinbras." See Karl Kindt, *Der Spieler Gottes: Shakespeares Hamlet als christliches Welttheater* (Berlin: Wichern-Verlag Herbert Renner, 1949), p. 95. Together with the other merits of this excellent book, Kindt expands upon the objective [historical] action in the Hegelian Karl Werder's interpretation of *Hamlet*, which is an important step in

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a Solomonic passage from Proverbs: "When he appointed the foundations of the earth, then I was by him, as one brought up with him, and was daily his delight, rejoicing always before him, rejoicing in the habitable part of his earth."[7]

In German the word "play" has numerous aspects and contrasting applications. Anyone who strokes a violin, blows a flute or beats a drum following notes on a score calls it "playing." Whoever throws or hits a ball according to the rules of the game is also "playing." Little children and lively cats play with a special intensity, delighting in the fact that they do *not* play according to rules but in perfect freedom. From the complete control of an omnipotent and omniscient God to the activity of irrational beings, all possible and contradictory rules are thus circumscribed by the concept of "play." Even so, in play lies the fundamental negation of the serious situation, the state of emergency.[8] The tragic ends where play begins, even when this play is melancholic — a melancholic play for melancholic spectators, a deeply moving *Trauerspiel*. At least with respect to Shakespeare's *Trauerspielen*, whose character as play appears also in his so-called "tragedies," we cannot ignore the unplayability of the tragic.

### *The Play within the Play: Hamlet or Hecuba*

All the world's a stage, or so it had become in the already intensely baroque atmosphere around 1600 — a *Theatrum Mundi*, *Theatrum Naturae*, *Theatrum Europaeum*, *Theatrum Belli*, *Theatrum Fori*. Men of action

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overcoming the psychological interpretation. See Karl Werder, *Vorlesungen über Shakespeares Hamlet gehalten an der Universität in Berlin 1859-60* (Berlin: Hertz Verlag, 1875).

7. Chapter 8: 30-31. In the vulgate it reads: *ludens in orbe terrarum*. This is not the place to explicate this obscure passage, nor to discuss the relation of church liturgy and its sacrifice to such a profound concept of play. In any case, Shakespeare's drama has nothing to do with church liturgy. Neither is it religious, nor does it exist (like classical French theater) in a framework determined by the sovereignty of the state. The idea that God plays with us can as well lift us up to an optimistic theodicy or lower us to a despairing irony or bottomless agnosticism. It need not concern us here.

8. See Rüdiger Altmann's article, "Freiheit im Spiel" in *Frankfurter Allgemeine Zeitung*, No. 100 (April 30, 1955). The entire passage reads: "Play is the fundamental negation of the state of emergency. Therein lies its existential significance. One can only know what play is after experiencing the state of emergency. The fact that play is often fashioned after the state of emergency does not alter this fact." Formulated in Hans Freyer's concepts and terms, one could say that it belongs to the essence of the tragic not to be incorporated into a secondary system, even as the secondary system has its own rules which exclude intrusions of tragic action, perceiving such as disturbances if it notices them at all. Perhaps someday a legislator, realizing the relation between freedom and play or freedom and leisure will establish the simple legal definition: Play is everything that has to do with the structure and content of legally-sanctioned leisure.

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in this epoch saw themselves on a rostrum before spectators, understood themselves and their activities in terms of the theatricality of their roles. Such a stage existed in other times, but in the baroque epoch it was especially intense and widespread. Action in the public sphere was action on a stage and thus role-playing: "No life evidences more play and theater than that which elects the life of the court."[9] James I also admonished his son to remember always that as king he would be on stage and all eyes would be upon him.

In Shakespeare's Elizabethan England the baroque theatrification of life was still unfounded and elementary — not yet incorporated into the strict framework of the sovereign state and its establishment of public peace, security and order, as was the theater of Corneille and Racine in the France of Louis XIV. In comparison with this classical theater, Shakespeare's play in its comic as well as melancholic aspects was coarse and elementary, barbaric and not yet "political" in the sense of the state at that time.[10] As rudimentary theater it was all the more intensely integral to its current reality, a part of the present in a society which largely perceived its own action as theater — a theater which did not for this reason oppose the situation of the play to the concrete contemporary situation. Society too was seated on the rostrum. The play on stage could appear without artificiality as theater within a theater, as a living play within the immediate play of real life. The play on stage could magnify itself as play without abstracting itself from the present reality. Even a double magnification became possible: the play within the play, which found astonishing realization in Act III of *Hamlet*. Here one can speak even of a triple magnification, because the preceding pantomine, the "dumb show," once again mirrors the core of the action.

This play within the play is something other than a look behind the scenes. Above all it must not be confused with the actor's play, which originated in the 19th century in the wake of social revolution. In the actor's play the scenery is torn down, the mask is removed on stage, and the actor presents himself in his naked humanity or as a member of an oppressed class. In the 19th century the elder Dumas made the famous Shakespearean actor, Edmund Kean, into the hero of a play; in our own century, Jean-Paul Sartre has done something similar without adding anything essentially new. In both cases, a false public sphere is

9. Cf. Caspar von Lohenstein's dedication to *Sophonisbe*, quoted in Benjamin, *The Origin of German Tragic Drama*, op.cit., p. 93.

10. See my appendix on Walter Benjamin and German Tragic Drama.."

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revealed on the rostrum, i.e., in the public sphere of its own theater. Masks and scenery are thrown out; to be sure, only *in* the theater and only *as* theater. The spectators receive instruction about an individual psychological or social problem. The play turns into discussion or propaganda. Modifying one of Karl Marx' angry outbursts, one can say here: the emancipation of the actor is achieved in such a way that he becomes the hero and the hero becomes the actor.

In Shakespeare's *Hamlet* the play within the play in Act III is no look behind the scenes. One might consider Hamlet's meeting with the actors in Act II as such — the conversation with them, their declamations, and the advice Hamlet gives them could be the prelude to a genuine actor's play. But together these two acts are in fact the opposite. They don't serve an actor's play but rather the pure play within the play. The actor who declaims the death of Priam weeps for Hecuba. Hamlet does not weep for Hecuba. He is astonished that there are people who, in the performance of their duties, weep over something which does not concern them and has no impact on their actual existence or situation. From this realization he is strongly admonished to concentrate on his own situation and compelled to take action to fulfill his vow of vengeance.[11]

It is inconceivable that Shakespeare has nothing more in mind than to make his Hamlet into a Hecuba, that we are meant to weep for Hamlet as the actor wept for the Trojan queen. We would weep for Hamlet as for Hecuba if we wished to divorce the reality of our present existence from the play on the stage. Our tears would then become the tears of actors. We would no longer have any purpose or cause because we would have sacrificed both to the aesthetic enjoyment of the play. That would be bad, for it would prove that the gods in the theater are different from those in the forum and the pulpit.

The play within the play in Act III of *Hamlet* is not only no look *behind*

11. Hamlet's Hecuba monologue (II,ii) precisely defines his true task, his *cause*, his purpose, and he reproaches himself severely for being "unpregnant of my cause." But what is Hamlet's cause, his purpose? The question is all the more significant because in his Hecuba monologue Hamlet conceives the plan to capture the murderer through the play within the play — the plan of the "mousetrap." Here then, in this important question of Hamlet's purpose, we come across a curious discrepancy between the first edition of the play (Quarto I of 1603) and the later versions (Quarto II and Folio I), more commonly used today. According to the later versions, Hamlet has only *one* purpose: to revenge the king, who was rudely robbed of life and property. However, according to the first edition, which originated *before* James I's accession to the throne in 1603, Hamlet suffers a double loss: his father murdered *and a Crown bereft him* (Quarto II, 2, p. 587). It is clear that the young Hamlet was himself *bereft* or robbed of a crown. This second "motive and brand of suffering" was the call to the undecided James from the Essex-Southampton group. *After* the succession to the throne, it had to be left out.

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the scenes, it is the real play repeated *before* the curtains. This presupposes a realistic core of the most intense timeliness and significance. Otherwise the doubling would simply make the play more playful, more unlikely and artificial — more untrue as a play, until finally it would become a "parody of itself." Only a strong core of reality could stand up to the double exposure of the stage upon the stage. It is possible to have a play within a play, but not a tragedy within a tragedy. The play within the play in Act III of *Hamlet* is thus a phenomenal test of the hypothesis that a core of historical actuality and historical presence — the murder of the father and the marriage of the mother to the murderer — has the power to intensify the play as play without destroying the sense of the tragic.

What is significant about this fascinating play is that it does not exhaust itself without a trace. It contains other components than those of the play and, in this sense, is imperfect. There is no closed unity of time, place and action, no internal process sufficient unto itself. It has two major openings through which historical time breaks into the time of the play, and this unpredictable current of ever-new possibilities of interpretation, of ever-new yet ultimately unsolvable puzzles flows into the otherwise very genuine play. Both intrusions — the tabu which surrounds the guilt of the queen, and the distortion of the avenger which leads to the Hamletization of the hero — are shadows, two dark areas. They are in no sense mere historical and political implications, neither simple allusions nor true reflections, but rather two given circumstances received in and respected by the play and around which the play timidly maneuvers. They disturb the unintentional character of pure play and, in this respect, are a *minus*. Nevertheless, they made it possible for the figure of Hamlet to become a true myth. In this respect they are a *plus*, because they succeeded in elevating *Trauerspiel* to tragedy.

### *Tragedy and Invention*

In relation to every other form, including *Trauerspiel*, genuine tragedy has a special and extraordinary quality, a kind of surplus value that no play, however perfect, can attain because a play, unless it misunderstands itself, does not even want to attain it. This surplus value lies in the objective reality of tragic action itself, in the enigmatic involvement and entanglement of indisputably real people in the unpredictable course of indisputably real events. This is the basis of the seriousness of tragic action which, being impossible to fictionalize or relativize, is also impossible to play. All participants are conscious of an ineluctable reality which no human mind has conceived — a reality

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externally given, imposed and unavoidable. This reality is the mute rock upon which the play founders and the foam of genuine tragedy rises to the surface.

This is the final and insurmountable limit of literary invention. A writer can and should invent a great deal. He cannot invent the realistic core of a tragic action. We can weep for Hecuba. One can weep for many things. Many things are sad and melancholy. But tragedy originates only from a given circumstance which exists for all concerned — an incontrovertible reality for the author, the actors and the audience. An invented fate is no fate at all. The most inspired creation is useless here. The core of tragic action, the source of genuine tragedy, is something so irrevocable that no mortal can invent it, no genius can compose it. On the contrary: the more original the invention, the more rigorously conceived the construction, the more perfectly the play works, the more certain the destruction of the tragic. In tragedy the common public sphere (which in every performance encompasses the author, the actors and the audience) is not based on the accepted rules of language and play but upon a shared historical reality.

In spite of Nietzsche's famous formulation in *The Birth of Tragedy*, the source of tragic action cannot be music. In another and equally famous formulation, Wilamowitz-Muellendorff defines Attic tragedy in terms of myth or heroic legend.[12] He insists that the origin of tragedy in myth must be consciously incorporated into the definition of tragedy, whereby myth becomes the source of tragedy. Unfortunately, he is not consistent. In the course of his discussion, myth becomes the "stuff" of tragedy in general and ultimately even the premise of a "story" (as one would say today) from which the writer "creates." That is again nothing more than a literary source. Nevertheless, the definition remains correct because it perceives myth as a form of heroic legend which is not only a literary source of the writer but a vital understanding shared by the writer and his public — a part of reality to which all participants are bound by their historical existence. Attic tragedy is thus no simple play, because an element of reality flows into the performance

12. Ulrich von Wilamowitz-Moellendorff, *Euripides Herakles*, Vol. I, *Einleitung in die Attische Tragödie* (Berlin: Weidemann Verlag, 1889), pp. 43ff. What is an Attic tragedy? Wilamowitz-Moellendorff defines legend as "the sum of the living historical recollections of a people in a time when the people could only be conceived concretely as a history of a myth." According to Wilamowitz-Moellendorff: "An Attic tragedy is an internally self-contained part of heroic legend, poetically conceived in an elevated style for presentation by an Attic choir of citizens and two or three actors, designed as part of the public ritual in the shrine of Dionysius."

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from the spectators' actual knowledge of the myth. Tragic figures like Orestes, Oedipus and Hercules are not imaginery but real forms of a living myth introduced into the tragedy from an external present.

It is a different matter with Schiller's historical drama, where the question is whether or not the cultivated knowledge of history which can be presumed of the audience establishes a common public sphere. The answer to this question determines whether history becomes a source of tragic action or only the literary source for a *Trauerspiel*. I do not think that knowledge of history can replace myth. Schiller's drama is *Trauerspiel*; it has not risen to the level of myth. We know that he thought much about this question and developed his own philosophy of play. Art is for him a realm of autonomous representation. Only in play does one become human, does one transcend self-alienation and find true dignity. In such a philosophy, play must overcome seriousness. Life is serious, art is merry: yes, but the serious reality of the man of action is then ultimately only "miserable reality" and seriousness is always on the verge of becoming the law of the jungle. The autonomous and higher realm of art plays itself out against both seriousness and life. In 19th century Germany the spectators of classical Schiller drama saw world history as world theater and enjoyed this play as self-edification in the sense of Schiller: "When you have seen the great play of the world, you return much richer into yourself."[13]

In Shakespeare's time the play was not yet a realm of human innocence, not yet divorced from its present reality. 16th century England was far removed from the comfortable and cultivated enjoyment of 19th century Germany. The play still belonged to life itself — to a life certainly full of spirit and grace, but one not yet "politicized." It was a life at the first stage of an elemental leap from the land to the sea, the transition from a terrestrial to a maritime existence. To the elite belonged such seafarers and adventurers as the Earl of Essex and Walter Raleigh. The play was still barbaric and elemental; it shunned neither morbidity nor buffoonery. Shakespeare, like Schiller, utilized and incorporated historical and literary sources. But even in his historical dramas he had a different relation to history.

We have already referred to Shakespeare's seemingly anti-historical arbitrariness. In his dramas based on English history, history is for him not even a literary source but simply a mouthpiece. His plays are always unencumbered theater — burdened neither with philosophical

13. These lines are from Schiller's *Huldigung der Künste*: "Wenn du das grosse Spiel der Welt gesehen, So kehrst du reicher in dich selbst zurück."

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nor aesthetic problems. As much as the avenger is problematized in *Hamlet*, this drama of revenge does not attempt either a deproblematization through play or a humanization through art, neither a birth of humanity in the play. The author of this consistent drama feared neither allusions nor reflections, but he allowed genuine historical intrusions. In the figure of Hamlet he came up against a concrete tabu and a historically concrete figure he respected as such. The son of a king and the murder of a father are for Shakespeare and his public present and inescapable realities from which one shrinks out of timidity, out of moral and political considerations, out of a sense of tact and natural respect. This accounts for the two historical intrusions into the otherwise closed circle of the play — the two doors through which the tragic element of an actual event enters into the world of the play and transforms the *Trauerspiel* into a tragedy, historical reality into myth.

The core of historical reality is not invented, cannot be invented, and must be respected as given. It enters into the tragedy in two ways, thus there are two sources of tragic action: one is the myth of classical tragedy, which mediates the tragic action; the other, as in *Hamlet*, is the given historical reality which encompasses the playwright, the actors and the audience. Whereas the tragedies of classical antiquity have the myth before them and create from it the tragic action, in the case of *Hamlet* we encounter the rare (but typically modern) case of a playwright who establishes a myth from the reality he directly confronts. But neither in antiquity nor in modern times could the playwright invent the tragic action. Tragic action and invention are irreconcilable and mutually exclusive.[14]

Shakespeare's incomparable greatness lies in the fact that, moved by reserve and consideration, led by tact and respect, he was capable of

14. Wilhelm Wackernagel, *Über die dramatische Poesie* (Basel: Schweighauser Verlag, 1838).Nevertheless, the reality of tragedy is for Wackernagel only the reality of *past* history; the reality of the present belongs to *comedy*. He is thus already on his way to historicism. But his understanding is still considerable. Hegel's influence on him is enduring and significant, broadening his horizon. The very quantity of insightful judgments is astonishing. One example is his observations on the figure of Don Carlos in Schiller's drama. He emphasizes its historical falsehood, the extent of its deviation from historical reality, whereby "tragedy is displaced." He also cites Jean Paul's statement concerning the *cognito* of great historical names and the number of situations already named. Because he sees history not as present but only as past, it must ultimately become for him only a literary source. The same holds true for legend, similar to what we have already observed for Wilamowitz-Moellendorff. As a result, Wackernagel does not distinguish between *Trauerspiel* and tragedy, and ignores the problem of the relation between play and tragedy. In this respect, Benjamin's references to Wackernagel must be refined. See Benjamin, *The Origin of German Tragic Drama*, *op cit.*, pp. 89 and 106.

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extracting from his contemporary political situation the form capable of being raised to the level of myth. His success in conceiving the core of a tragedy and achieving the myth was the reward for that reserve and respect which honored the tabu and transformed the figure of an avenger into a Hamlet. Thus was the myth of Hamlet born. A *Trauerspiel* rose to tragedy and could thus convey to future ages and generations the living reality of a mythical figure.

# Appendix
## *On the Barbaric Character of Shakespearean Drama: A Response to Walter Benjamin on* The Origin of GermanTragic Drama[1]

Shakespearean drama in general and *Hamlet* in particular is no longer religious in the medieval sense, but neither is it national or political in the concrete sense that the state and politics acquired on the European continent through the development of state sovereignty during the 16th and 17th centuries. In spite of many contacts and ties with the continent, and some similarities in the transition from the Renaissance to the Baroque, English drama cannot be defined by such labels. It belongs entirely to the specific historical evolution of the island of England, which had then begun its elemental appropriation of the sea. This great step is both spatially and historically the intellectual background of Shakespearean drama.

Walter Benjamin distinguishes between tragic drama *(Trauerspiel)* and tragedy[2] and, in keeping with the title of his book, deals primarily with German baroque tragic drama. Nevertheless, the book is rich in important insights and perspectives both for aesthetics and intellectual history in general, as well as for Shakespearean drama and *Hamlet* in particular. Especially fruitful in my opinion is the characterization of Shakespeare in the section titled "Allegory and *Trauerspiel*," which demonstrates that in Shakespeare the allegorical is as essential as the elemental. "Every elemental utterance of the creature [in Shakespeare] acquires significance from its allegorical existence, and everything

1. "Über den barbarischen Charakter des Shakespeareschen Dramas: Zu Walter Benjamin, *Ursprung des deutschen Trauerspiels*, Ernst Rowohlt Verlag, Berlin 1928," *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel*, *op.cit.*, pp. 62-67.

2. Benjamin, *The Origin of German Tragic Drama*, *op cit.*, pp. 57-158.

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allegorical acquires emphasis from the elemental aspect of the world of the senses."[3] In *Hamlet* this means that "the drama of fate flares up in the conclusion of this *Trauerspiel* as something that is contained, but of course overcome, in it."[4]

The principal passage on *Hamlet* is found at the conclusion of the section on "*Trauerspiel* and Tragedy."[5] Even here the reference is to the conclusion of Act V, scene ii, wherein Benjamin recognizes something peculiarly Christian because Hamlet, shortly before his death, speaks of Christian providence "in whose bosom his mournful images are transformed into a blessed existence." It is here that this age presumably succeeded "in conjuring up the human figure who corresponded to this dichotomy between the neo-antique and the medieval light in which the baroque saw the melancholic. But Germany was not the country which was able to do this. The figure is Hamlet."

This is a magnificent passage in Benjamin's book. But then we read: "For the *Trauerspiel*, Hamlet alone is a spectator by the grace of God; but he cannot find satisfaction in what he sees enacted, only in his own fate."[6] I understand the antithesis of play and fate referred to here, but I must admit that this sentence (which directly precedes the reference to Christian providence) is otherwise obscure to me. I cannot assume that in this passage Benjamin wanted to make Hamlet into a sort of "God's player" in a Lutheran sense, as the Lutheran theologian Karl Kindt has done.[7] Benjamin writes: "Only Shakespeare was capable of striking Christian sparks from the baroque rigidity of the melancholic, un-stoic as it is un-Christian, pseudo-antique as it is pseudo-pietistic."[8] In response, I would like to make the following remarks:

*Hamlet* is not Christian in any specific sense, and even the famous passage concerning providence and the fall of the sparrow (Act V, scene ii) does not alter this fact. Perhaps it escaped Benjamin's attention that Hamlet speaks of a "special providence," whereby we already enter into theological controversies about special and general providence. Moreover, Shakespeare first names this type of providence in the text of Quarto 2. In Quarto 1 it reads: "*predestinate providence*," which already opens the infernal gates of the theological struggle and the confessional civil war. In my view, it would have been more Christian to

3. *Ibid.*, p. 228.
4. *Ibid.*, p. 137.
5. *Ibid.*, pp. 157-158
6. *Ibid.*
7. Kindt, *Der Spieler Gottes: Shakespeares Hamlet als christliches Welttheater*, *op.cit.*
8. Benjamin, *The Origin of German Tragic Drama*, *op.cit.*, p. 158.

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simply cite the passage from Matthew 10: 29. However, the additional theologizing is in keeping with the taste of the theologizing James.

Revenge is the actual theme in the first part of the play — until the murder of Polonius (Act III, scene iv). At this point Hamlet stands between Catholicism and Protestantism, Rome and Wittenberg. Even his misgivings about the ghost of his father, which appears to him, are determined by the antithesis of Catholic and Protestant demonology expressed in their opposing dogmas of purgatory and hell. What can here be called Christian has been filtered through James, the son of Mary Stuart, who was completely caught up in the confessional struggle. The only really Christian aspect in this first revenge part of the play is the prayer of the murderer in the monologue (Act III, scene iii). The second part of the play contains a life and death struggle and the murder of the heir. As a motif, the murder of the heir belongs to the oldest of Christian themes (Matthew 21: 38, Mark 12: 1-12, Luke 20: 9-19, Acts 7: 52). No trace of this is to be found in Shakespeare's *Hamlet*, although Hamlet is unquestionably seen as the rightful heir to the throne.

Shakespeare's drama is no longer Christian. But it is also not on the way to the sovereign state of the European continent, which had to remain neutral with respect to religion because it was founded on the overcoming of the confessional civil war. Even when this state recognized a state religion and a state church it based this act on a sovereign political decision. Benjamin makes reference in his book to my definition of sovereignty.[9] In 1930 he expressed his gratitude to me in a personal letter. However, it appears to me that he underestimates the dissimilarity between insular England and continental Europe, and therewith also between English drama and 17th century German baroque *Trauerspiel*. This dissimilarity is also essential for an interpretation of *Hamlet*, because this play cannot be understood in terms of aesthetic or intellectual categories like the Renaissance and the Baroque. The dissimilarity can be characterized most quickly and accurately with a catchword antithesis whose richness of meaning is symptomatic for the intellectual history of the concept of the political. It is a question of the antithesis between the barbaric and the political.

Shakespeare's drama falls within the first stage of the English revolution, if one dates it (as is possible and reasonable) from the destruction of the Armada in 1588 to the expulsion of the Stuarts in 1688. During these hundred years a new political order on the European continent developed from the neutralization of the confessional civil war — the

9. *Ibid.*, pp. 65-66, 74 and 239n.

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sovereign state, which Hobbes called an *imperium rationis* and Hegel described as a realm of objective reason beyond theology whose *ratio* put an end to the heroic age, the age of heroic law and heroic tragedy.[10] The century of civil war between Catholics and Protestants could only be overcome by the dethroning of the theologians, because they kept this civil war alive with their doctrine of tyrannicide and the just war. In place of the medieval order of feudal castes or estates appeared a public order of peace and security created and maintained by the legitimating achievement of the new entity: the *state*. It would be untenable and only confusing to designate any other polities, systems or orders of world history as *states*. Those thinkers who no longer looked to the church but to the state for deliverance from the hopelessness of the confessional civil war, among them the jurist Jean Bodin, were called politicians, *politiciens* in a very specific sense in France, the foremost country on the European continent. The sovereign state and politics were antithetical to the medieval forms and methods of a religious and feudal domination.

In this situation the word *political* acquired a polemical meaning as opposed to the word *barbaric*; concretely, it acquired the meaning of a genuine antithesis. In the language of Hans Freyer,[11] a secondary system supersedes elementary and primary orders that function poorly. The modern state transformed the militia, the given order, subsistence, and lawfulness into organizations characteristic of the *state*: army, police, finance and justice. Through these organizations the state established what it called public peace, security and order, and made possible the condition of a "policed existence." In this way, politics, police and *politesse* [civility] constituted a remarkable troika of modern progress opposed to religious fanaticism and feudal anarchy— to medieval barbarity.

The classical theater of Corneille and Racine, with its classical or, more precisely, juridical or, even more precisely, legalistic unity of place, time and action could emerge only in this sovereign state.[12] From the perspective of this sovereign state, it is conceivable that

10. Hegel, *Rechtsphilosophie*, paragraphs 98 and 218.

11. Hans Freyer, *Theorie des gegenwärtigen Zeitalters* (Stuttgart: Deutsche Verlagsanstalt, 1955).

12. Lucien Goldmann states that Racine's theater and his concept of the tragic derived from the changing positions of Jansenism vis-a-vis Church and State. His book, *Le Dieu caché, étude sur la vision tragique dans les Pensées de Pascal et dans le théatre de Racine* (Paris: Gallimard, 1955) only came to my attention after the page proofs of this study were already in hand. Perhaps there will be a possibility to compare Goldmann's positions and concepts with my interpretation of *Hamlet*.

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Voltaire would see in Shakespeare a "drunken savage." In contrast, the German *Sturm und Drang* of the 18th century used Shakespeare in its struggle against French drama. That was possible because conditions in Germany at that time were in part still pre-state, if no longer (thanks to nationalism) as barbaric as in Tudor England. It was at that time that the young Goethe, under the influence of the Baltic Herder, delivered his fabulous speech, "Zum Schakespears Tag" (1771), with its famous passage: "My dear Frenchmen, what do you want with Greek armor too large and heavy for you. That is also why all French *Trauerspiele* are parodies of themselves."

In many ways Tudor England was becoming a state.[13] But it was in this century from 1588 to 1688 that the island of England withdrew from the continent of Europe and took the step from a terrestrial to a maritime existence. England became the center of an oversea empire and even the original home of the industrial revolution without passing through the corridor of continental statehood. She organized neither a state army nor a police, neither a judicial nor a financial system in the sense of the continental state. Following the lead, first of seafarers and pirates, then of trading companies, England appropriated the lands of a New World and the waters of the world's oceans.

This is then the century of the English revolution (1588-1688), whose first phase saw the dramas of Shakespeare. One should not view this situation only from the past or present of that time — from the perspective of the Middle Ages, the Renaissance and the Baroque. Measured in terms of the progress toward civilization which the ideal of continental statehood (realized, of course, only in the 18th century) signified, Shakespeare's England appears as still barbaric, i.e., in a pre-state condition. However, measured in terms of the progress toward civilization signified by the industrial revolution (begun only in the 18th century), Elizabethan England appears in a phenomenal transformation from a terrestrial to a maritime existence — a transformation which accomplished the industrial revolution and thus effected a much deeper and more fundamental revolution than those on the European continent, a revolution which far exceeded the progress that

13. Both Marlowe and Shakespeare used the word *state* with specific meanings, which deserve a special etymological investigation. In my book, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*, I make reference to this fact in a larger context. Such an etymology would of course require better information about questions of state theory and the history of the concept of the polititical than that provided in the otherwise fine book by Hans H. Glunz, *Shakespeares Staat* (Frankfurt a/M: Vittorio Klostermann Verlag, 1940). Important documentary evidence for a history of the word *state* can also be found in Bacon's essays.

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continental statehood made by overcoming the "barbaric Middle Ages." The Stuart line was not fated to perceive any of this, and was thus unable to extricate itself from the religious and feudal Middle Ages. Therein lies the hopelessness of the spiritual or intellectual position of James I, with his arguments about the divine right of kings. The Stuarts neither grasped the sovereign state of the European continent nor the transition to a maritime existence that the island of England achieved during their reign. Thus they disappeared from the world stage when the great appropriation of the sea was decided and a new global order of land and sea found its documentary recognition in the Treaty of Utrecht (1713).

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# *Political Aesthetics: Carl Schmitt on Hamlet*

David Pan

In "The Source of the Tragic,"[1] Carl Schmitt articulates a detailed critique of autonomy aesthetics in which he rearticulates principles of his political theory — the critique of liberalism, normativism and subjectivity: decisionism. His essay can thus be read as a sort of right-wing inversion of the critique of bourgeois aesthetics expressed in Adorno's "Lyric Poetry and Society."[2]

Schmitt belabors both the divisions characteristic of 19th century disciplines which prevented historical consideration of a work of art, and the attendant emphasis on the subjectivity of the artist and the sublimity of art. Unlike lyric poetry or even dramas written more for publication than performance, he contends that Shakespeare's plays should neither be considered products of a free and isolated subjectivity nor artistic preserves untainted by the banalities of contemporary history. Shakespeare's plays, written for immediate performance, presume "a public sphere which encompasses and incorporates the author, the director, the actors, and the audience itself." Here Schmitt outlines a concept of the relation between art and society which breaks down traditional barriers between the two and allows the previously private realm of art to be redefined as existing within a public sphere. His argument, similar to various leftist critiques of autonomy aesthetics, seems to offer both the democratization of art an escape for art from the fetters of an elitist bourgeois subjectivity and a politicization in which art affects and is affected by political events. In Elizabethan England art presumably had not only to maintain a constant political consciousness in order to satisfy both the political powers and the London audience, it had also its own influence in contemporary political debates. As an example, Schmitt indicates how Shakespeare used certain lines in *Hamlet* to support James' bid for the throne.

Before praising Schmitt for his progressiveness, however, one

1. See the preceding article in this issue.
2. Theodor Adorno, "Lyric Poetry and Society," *Telos* 20 (Summer 1974), pp. 56-71.



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should examine more closely the consequences of this particular critique of autonomy aesthetics. Schmitt's understanding of the relation between art and society necessitates a situation in which "Men of action . . . saw themselves on a rostrum before spectators, understood themselves and their activities in terms of the theatricality of their roles. . . . As rudimentary theater it was all the more intensely integral to its current reality, a part of the present in a society which largely perceived its own action as theater — a theater which did not for this reason oppose the situation of the play to the concrete contemporary situation. Society too was seated on the rostrum."

This description of a total dissolution of the boundary between theater and life calls to mind several related discussions. For one, Schmitt draws the same consequences as Adorno with respect to the breakdown of the autonomy of art. But while Adorno views art's opposition to the concrete contemporary situation as its primary, if not last remaining option for criticism, Schmitt denigrates such an opposition as a denial of history and the deterioration of art into mere "play" lacking any seriousness or meaning. He thereby suggests that any autonomy aesthetics is implicated in an escapism that will retard a serious response to the exigencies of real life and *Realpolitik*. While Adorno also recognizes the danger of a loss of reality and meaning inherent in an autonomous conception of art, he never succumbs to an unproblematic affirmation of empirical reality.[3] On the contrary, Adorno evaluates the dialectic between art and reality immanently and with vague invocations of a utopian alternative.

In another related discussion, Peter Bürger describes the historical avant-garde's attempt to bring about a dissolution of the boundary between art and society similar to what Schmitt describes as "the intrusion of time into the play."[4] The goal, however, is different, being based on art's resistance to the "means-ends rationality" of bourgeois society. Art's resistance is to be mobilized and integrated into society in order to break up this destructive rationality. The fact that the attempted integration of art and society succeeded, resulting in the destruction of art's resistance to the culture industry, provides us with an indication: first, of the similarity between Schmitt's aesthetics and that of the historical avant-garde (in Bürger's reconstruction); second, of

3. Theodor W. Adorno, "Culture, Criticism and Society," *Prisms* (Boston: MIT Press, 1967).

4. Peter Bürger, *Theory of the Avant-Garde* (Minneapolis: University of Minnesota Press, 1984).

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the socio-historical consequences of this aesthetics.[5] Whereas Adorno attempts a critique of life in favor of a utopia as yet only possible in art, and Bürger's historical avant-garde attempts to realize in society this utopia first formulated in art, Schmitt attempts to harness the potential of art, first for the "man of action," then for an existing (heteronomous) social order. His attack on autonomy aesthetics politicizes art in the sense that it becomes functional for the political system and a field of action for the power of the sovereign.

Schmitt's model of the functioning of art in society derives from the France of Louis XIV: "In Shakespeare's Elizabethan England the baroque theatrification of life was still unfounded and elementary — not yet incorporated into the strict framework of the sovereign state and its establishment of public peace, security and order, as was the theater of Corneille and Racine . . . ." In other words, the breakdown of the functional barrier between art and politics leads to the incorporation of art into a strict framework of state control. If the politicization of art depends upon its existence within a single public sphere in which art and politics overlap, then the only art possible is that which supports those in control of this public sphere, be it the sovereign state or the culture industry.

The very existence of art within a public sphere is an implicit affirmation of this sphere. All the examples Schmitt provides of the relation between Shakespeare's plays and English politics are cases in which Shakespeare exercised a kind of self-censorship to avoid offending James, or in which he encouraged and legitimized James' sovereign status. The point at which Shakespeare's plays lost their place in the public sphere of the London theater was when his troupe was banned by Elizabeth, owing to its alliance with the Earls of Southampton and Essex and the future King James. The troupe only regained its position after James became king and Shakespeare became again "politically correct." It seems clear that Schmitt is neither criticizing the subservience of art to political power, nor is he suggesting that Elizabethan England or absolutist France represented unique cases. On the contrary, his point is to cite *Hamlet* as a crown witness against an idealistic bourgeois aesthetics. What Schmitt is really intimating is that art is always political because politics is inescapable.

If Schmitt's view of the relation between history and art is one in which history forces its way into art and subjects it to the sovereignty of

5. Russell Berman, "Modern Art and Desublimation," *Telos* 62 (Winter 1984-85), pp. 31-57.

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the state, then it is not difficult to understand the connection between Schmitt's aesthetics and his politics. As Habermas observes: "The space Hobbes left free for private religious scruples allows, in Schmitt's view, the entrance of the subjectivity of the bourgeois conscience and of private opinion, the subversive force of which unfolds gradually. This private sphere is turned inside out and extends itself into the bourgeois realm; thus bourgeois society renders itself valid as a rival political power, and ultimately topples Leviathan from his throne, with the authority to legislate through Parliament."[6] In this same way, Schmitt rejects the establishment of the autonomy of art in the bourgeois private sphere, not because of its elitism but because both the autonomy of art and the bourgeois private sphere provide the haven for ideas to develop independent of institutional control. He attempts to reestablish this control through his description of art "raised to the level of myth." At first glance such a mythification of art bringing back its aura seems to be inconsistent with the disillusion of the autonomy of art. But this is true only if the autonomy of art is confused with its inaccessibility. The dissolution of the boundary between art and politics, the destruction of the *autonomy* of art, can be accompanied by a mythification of art — the destruction of the *accessibility* of art — only if politics also becomes inaccessible with "the idea of the state as myth."[7] This combined myth of art and the state, which establishes a public sphere totally inaccessible to the public, becomes the basis for the complicity of the culture industry and totalitarian society.

At this point there is still the question of how to conceive a relation between history and art which neither automatically affirms history nor mythologizes art. If Schmitt does not provide an answer, at least his attempted revision of Benjamin's discussion in *The Origin of German Tragic Drama* demonstrates how difficult it is to remain faithful to the answer. Schmitt leans heavily on Benjamin' book in constructing his argument. In so doing, however, he not only misinterprets many passages but also ignores Benjamin's methodology (without explicitly challenging it). The only argument he manages to raise against Benjamin is based on his misreading of a particular passage. Nevertheless, this misreading is instructive: "Walter Benjamin believes he recognizes in this passage something Christian in a special sense because Hamlet speaks shortly before his death of Christian providence 'in whose bosom his mournful images are transformed into a blessed

6. Jürgen Habermas, "Sovereignty and the Führerdemokratie," *Times Literary Supplement* (September 26, 1986), p. 1053.
7. *Ibid.*, p. 1054.

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existence.' It is here that this age supposedly succeeded 'in conjuring up the human figure who corresponded to this dichotomy between the neo-antique and the medieval light in which the baroque saw the melancholic. But Germany was not the country which was able to do this. The figure is Hamlet.' This is a magnificent passage in Benjamin's book. But then it reads: 'For the *Trauerspiel* Hamlet alone is a spectator by the grace of God; but he cannot find satisfaction in what he sees enacted, only in his own fate.' I understand the opposition between play and fate which is related here, but I must admit that this sentence which directly precedes the reference to Christian providence is otherwise obscure to me."[8]

Schmitt proceeds to dispute Benjamin's characterization of Hamlet as "Christian" and his failure to differentiate the historical situation in England and in Germany. Schmitt's position is based on his reading of European history as a progression from the "barbaric" confessional civil war of the Middle Ages to the "political" sophistication of the nation-state.[9] What he fails to glean from Benjamin's analysis, however, is the keen consciousness of what was lost in the process of baroque secularization: "Whereas the Middle Ages present the futility of world events and the transcience of the creature as stations on the road to salvation, the German *Trauerspiel* is taken up entirely with the hopelessness of the earthly condition."[10] This hopelessness, arising from the idea that salvation can only exist in heaven, manifests itself as "an icy disillusion" in which the concept of ethical political action with the goal of an earthly salvation is not even a possibility. Instead, "spirit — such was the thesis of the age — shows itself in power. . . . Such a conception of perfect conduct on the part of the man of the world awakens a mood of mourning in the creature stripped of all naive impulses."[11] Seeing the rule of power as cause for mourning, and faulting the German *Trauerspiel* for never reaching beyond this pragmatic conception of history, Benjamin singles out *Hamlet* as the only work to become conscious of the sadness of this pragmatic acceptance of the historically given, and to yearn for a Christian salvation enacted not in a heavenly but in an earthly fate. Such is the meaning of that passage Schmitt finds so obscure.

Schmitt's lack of understanding is not surprising, since he

8. Carl Schmitt, *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel* (Düsseldorf and Cologne: Eugen Diederichs Verlag,1956), p. 63; Walter Benjamin, *The Origin of German Tragic Drama*, Translated by John Osborne (London: New Left Books, 1977), pp. 157-158.

9. Schmitt, *Hamlet oder Hekuba*, *op. cit.*, p. 65.

10. Bemjamin, *The Origin of German Tragic Drama*, *op.cit.*, p. 81.

11. *Ibid.*, p. 98.

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wholeheartedly accepts the mournful "thesis of the age" and praises Shakespeare for submitting both to the power of a kind of state censorship and to the historically given: "The son of a king and the murder of a father are for Shakespeare and his public present and inescapable realities from which one shrinks out of timidity, out of moral and political considerations, out of a sense of tact and natural respect. This accounts for the two historical intrusions into the otherwise closed circle of the play — the two doors through which the tragic element of an actual event enters into the world of the play and transforms the *Trauerspiel* into a tragedy, historical reality into myth." Schmitt's insistence upon the inescapability of historical facts not only prevents him from conceiving history as anything other than a power struggle but also from understanding Benjamin's project of redeeming facts in the world of ideas. For Benjamin, "it does not follow . . . that every primitive 'fact' should straightaway be considered a constitutive determinant. Indeed, this is where the task of the investigator begins, for he cannot regard such a fact as certain until its innermost structure appears to be so essential as to reveal it as an origin."[12] It could be argued that Schmitt carefully selects only the "essential" facts, except that the way he uses these facts is not to guarantee the authenticity of an idea but rather to demonstrate how they intrude into the totality of the play. For Benjamin, such an intrusion would not be the point at which the play succeeds as tragedy, as it is for Schmitt, but at which it fails as an idea. Instead of affirming the play's subservience to history, Benjamin recognizes that the dramatic genre demands closed form "in order to achieve that totality which is denied to all external temporal progression."[13] Schmitt rejects closed form as mere "play" because in seeking the "source" of the tragic he sees only the opposition between historical fact and free invention. He thus fails to recognize Benjamin's option — either a redemption of facts in the idea or a redemption of history as a realization of utopian possibilities.

In contrast to Schmitt's notion of "source" (*Quelle*), Benjamin's notion of "origin" (*Ursprung*) "is never revealed in the naked and manifest existence of the factual; its rhythm is apparent only to a dual insight. On the one hand, it needs to be recognized as a process of restoration and reestablishment, but, on the other hand, and precisely because of this, as something imperfect and incomplete."[14] This dual insight is at once the reason for Benjamin's insistence on closed form and

12. *Ibid.*, p. 46.
13. *Ibid.*, p. 75.
14. *Ibid.*, p. 45.

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tendentiousness, which allows the affirmation that "invention is incompatible with tragedy."[15] Schmitt not only fails to understand Benjamin's commitment to closed form but also his conception of the relation between myth and tragedy. Whereas Schmitt explains tragedy as the reestablishment of myth through ambiguity, Benjamin recognizes in Attic tragedy the "tendentious re-shaping of the tradition"[16] and thus the end of myth and ambiguity: "In all the paradoxes of tragedy . . . ambiguity, the stigma of the daimons, is in decline."[17] Nevertheless, it is the waning power of myth which lends significance to the tendentious purpose: "For the re-shaping of the legend is not motivated by the search for tragic situations, but it is undertaken with a tendentious purpose which would lose all of its significance if the tendency were not expressed in terms of the legend, the primordial history of the nation."[18] Although Benjamin considers Attic tragedy an historical form, the standards of which cannot be applied to other genres, he uses this idea of a "tendentious re-shaping of the tradition" — as a model for a productive relation between contemporary critics and their inherited traditions. He thus maintains a consistency which, considered from a leftist perspective, Schmitt loses by arguing both for an (albeit unsophisticated) accessibility of Shakespeare's *Hamlet* to its contemporary audience and for its inaccessibility to later generations owing to its mythification. In terms of Schmitt's goals, however, his thinking is very consistent. The submission to the historically given which he advocates is guaranteed by the mythification of art and politics. But this is a clever distortion of Benjamin's commitment to the historically possible, whose relevance and significance is guaranteed by its tie to a mythic tradition not received as immutable and authoritative but as the tendentious re-shaping of myth.

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15. *Ibid.*, p. 106.
16. *Ibid.*
17. *Ibid.*, p. 109
18. *Ibid.*, p. 106.

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# *nomos*

No ordinary muscle opens superstition's
nest or miscarries of simulacrum,
nettles one's metaphysics or splits
nude orphans merrily on Sunday
nor on Mondays or swings
numbskull over metempsychotic owls, slaying
netherworld's odious monarch. Of such
noble's oddity may oesophagus sputter
nothing obscene, may only see
neurotic ordeal's magnetism. Our soul's
natural opportunism mocks overwrought self,
nods off, makes overtures, simpers
now or mumbles opprobrious soliloquy.
No other mind offers such
nemesis or matches our slippery
nourishment of moldy onion substances,
nauseous oncogenic messes, on sight.
Nurseling of mob obliges, strums
notes on mankind's organs, steadily
nudging our memories of swift
nothings, of mutiny, of soaring
naked over mimetic origins, sleeping
nights on maelstrom or sipping
neutered oyster milk. Oh study
nervous ogre's mutterings on sovereignty,
naming obsessively Moloch's own sister,
nephew, oncle, mother, or spewing
nefarious oratory mugging onerous Solomonic
norms, oiling miraculously optical sins.
*Nornens obskure Macht offenbart sich,*
*nährt Orkan, mäht ohne Sorgen!*
*Nomos ordnet meiner Ohnmacht Sach'.**

**Schuldt**

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* "Norn's obscure power reveals itself,
feeds hurricane, mows down and does not care!
Nomos governs my powerless cause."



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# *German Conservatism in America: Morgenthau's Political Realism**

Alfons Söllner

Hans J. Morgenthau's "political realism" was shaped by Bismarck's *Realpolitik*[1] and Weber's *Führerdemokratie*,[2] but developed within the historical context of Weimar political science: between the authoritarian anti-liberalism of Carl Schmitt and the democratic socialism of Hermann Heller.[3] In Germany Morgenthau adopted neither Schmitt's reduction of the concept of sovereignty to the state of exception, nor reformist legal optimism, but attempted to find his way between the two with what might be called a labile equilibrium of an incomplete political realism. In America, he found his own ground.

In Morgenthau's Frankfurt dissertation, "The International Judicial Function: Its Nature and its Limits,"[4] he focused on international law, which in Weimar Germany was taught as a juridical subject but with specific links to political science. Some universities stressed its relation to legal phenomena, while others sought to free it from the dominance of the juridical method. While the core of Weimar political science still remained constitutional law, the typical positivistic method of treating sociological and other metajuridical assumptions was already being questioned. An analagous tension was also evident in international law

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* This article, translated by Eric Danly, has been edited from "Hans J. Morgenthau: Ein deutscher Konservativer in Amerika?: Eine Fallstudie zum Wissenstransfer durch Emigration" in *Antisemitismus und jüdische Geschichte: Studien zu Ehren von Herbert A. Strauss*, Edited by Rainer Erb and Michael Schmidt (Berlin: Wissenschaftliche Autoren Verlag, 1987), pp. 243-256. Owing to the familiarity of American readers with Hans J. Morgenthau, only those biographical details essential to the argument of this article have been retained.

1. Biographical details on Morgenthau are from Hans J. Morgenthau, "Fragment of an Intellectual Autobiography: 1904-1932" and Bernard Johnson's Interview with Morgenthau, both in *Truth and Tragedy: A Tribute to Hans J. Morgenthau*, Edited by Kenneth Thompson and Robert J. Myers (New Brunswick, NJ: Transaction Books, 1984), pp. 1ff. and 333ff. respectively.

2. Cf. Wolfgang Mommsen, *Max Weber: Gesellschaft, Politik und Geschichte* (Frankfurt a/M: Suhrkamp Verlag, 1974).

3. Cf. Volker Neumann, *Der Staat im Bürgerkrieg* (Frankfurt a/M: Campus Verlag, 1980); and *Staatslehre in der Weimarer Republik* (Frankfurt a/M: Suhrkamp Verlag, 1985).

4. Hans Morgenthau, *Die internationale Rechtspflege: Ihr Wesen und ihre Grenzen* (Leipzig: Nofke Verlag, 1929).



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which, on the one hand, had a long and rich tradition of the *jus publicum Europaeum* — a tradition that had allied itself with the victory of positivism and ultimately found a purely juridical expression (for example, in the works of Hans Kelsen); and on the other, had the experience of WWI — Wilson's efforts to create an international order of peace and the formation of the League of Nations.[5]

This is the context within which Morgenthau wrote his dissertation. Critical of both the methodology and the objective limits of international legal practice — above all, the purely juridical categories in which international law was conceived — he sought to develop a more realistic approach to international law. In short, he focused on the *political* character of international relations; he drew special attention to the concept of the political in both constitutional and international law. Specifically, he argued that the concept of the political, which had long been left out of legal discourse, must return to the center of international law — that the future of the international community depended on a clarification of this concept.[6] Nevertheless, Morgenthau's thesis was ambivalent: on the one hand, he emphasized the extralegal character of inter-state relations — a formula of traditional political philosophy derived from the metaphor of the [Hobbesian] state of nature between states; on the other, he came to the conclusion that an international law freed of its juridical constraints could help remedy this state of nature — a conviction clearly presuming the *caveat* of a less stable situation in world politics.

Morgenthau fled Germany to Paris in 1933, where he published works evidencing his great disappointment with international law as an instrument for creating a rational world order. Here one can already see the origin of the traumatic transformation of a Weimar liberal into an American conservative.[7] Morgenthau fled to the US in 1937. For the first few years he experienced the relative handicaps of most other immigrants. In 1943 he went to the University of Chicago, which three years later offered him a permanent position. Already in 1942 he began to publish articles in the *American Journal of International Law* and other legal journals. Most of these articles dealt with international law and juridical problems.[8]

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5. Cf. Ludwig Adamovich, *The Science of the State in Germany and Austria* and Alfred Verdross-Drossberg, *The Study of International Law in German-Speaking Countries* (Paris: UNESCO, Contemporary Political Science, 1950), pp. 23ff and 594ff.

6. Morgenthau, *Die internationale Rechtspflege*, *op. cit.*, pp. 59ff. and 72ff.

7. Cf. Hans Morgenthau, *La notion du 'politique' et la théorie des différends internationaux* (Paris: Librairie de Recueil Sirey, 1933); *La réalité des normes* (Paris: Librairie de Recueil Sirey, 1934).

8. But he increasingly began to publish in philosophical journals, and in 1945 read

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The book that established Morgenthau's reputation in American political science was *Scientific Man versus Power Politics*, published in 1946. In quick succession he produced two further and more extensive works: *Politics among Nations* (1948); and *In Defense of the National Interest* (1951).[9] With this trilogy Morgenthau not only assured himself a prominent place in American political science, but also a role as a kind of "opinion leader" in international politics. His name became increasingly associated with a specific outlook and political program: "political realism." It would be an exaggeration to say that Morgenthau founded a new school, but he did become an eloquent spokesman for political realism. He also became a representative figure in the development of "international relations" in the US.

In the immediate postwar years Morgenthau produced numerous works, participated in various conferences and symposia, and educated a whole generation of students. His career can be traced through the successive editions of *Politics among Nations*, which has since become a political science classic. Since Morgenthau's death in 1980, it has seen six new editions in America alone and been translated into many other languages.

Even Morgenthau's critics concede that he forged the fundamental premises of a theory of international relations and thus provided a far-reaching analysis of this discipline which sheds light not only on the background of modern Europe but also on new developments in the 20th century — the epoch of totalitarianism and especially the transition to the atomic age. Consequently, his works are particularly instructive with respect to the question of scientific transfer through the intellectual emigration. Morgenthau himself makes reference to this in the second edition of *Politics among Nations* (1954) — the book that can be read as the culmination of his political experiences since the end of the 1920s. By linking this realization to the reflection that historical changes from that time led to a modification of his theoretical assumptions, he poses the question of acculturation. In the introduction to the third edition of his *magnum opus* (1960), Morgenthau seems to conclude his overall theoretical development.

The "great debate" about "political realism" in American political science began in 1946 with Morgenthau's first published work in

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a paper at an interdisciplinary "Conference on Science, Philosophy and Religion" at Harvard in which he programmatically formulated the theoretical foundation upon which international politics should be built: "The Evil of Politics and the Ethics of Evil." See *Ethics*, No. LVI (1945), pp. 1ff.

9. Hans J. Morgenthau, *Scientific Man versus Power Politics* (Chicago: University of Chicago Press, 1946); *Politics among Nations* (New York: Alfred A. Knopf, Publisher, 1948) and *In Defense of the National Interest* (New York: Alfred A. Knopf, Publisher, 1951).

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the US: *Scientific Man versus Power Politics*. Here we can see the beginning of the conflict between a European social scientist and the new country he had come to know. What appeared to be a summary of Morgenthau's European experiences brought him into sharp opposition to the mainstream of American political science. Morgenthau himself later hinted that he might not have been hired by the University of Chicago, then a stronghold of incipient behaviorism, had his book appeared earlier.[10] He was already then a critic of the rationalism and false illusions of historical liberalism, of Adam Smith's model of harmony and Herbert Spencer's belief in progress, so dear to the empiricists of the Chicago School. Nevertheless, Morgenthau extended his critique to the present: No less unrealistic than historical liberalism was the modern "science of politics." It overrated both the potential for enlightenment as well as planning since it was based on false analogies to natural science and misunderstood the fundamental moral conflicts which are decisive in politics.[11]

Morgenthau focused his attack on the illusions of "Wilsonianism," on the "pact mania" [*pacta sunt servanda*] in political practice since 1918 and the corresponding legalistic constructions of the theoreticians of international law: "The liberal conception of the function which the rule of law actually fulfills and is able to fulfill in the international sphere reposes upon a threefold misinterpretation of reality. It misunderstands the general relation between law and peace; it overlooks the particular conditions which the rule of law encounters in the international sphere; and it presumes that all social conflicts, domestic or international, can be settled on the basis of established rules of law."[12] But Morgenthau went even further. In his critique of international law, his opponent is liberalism itself: "In a tragic contradiction of Shakespearean dimensions, liberalism in the international field was to be destroyed by the very forces it had, if not created, at least helped to dominate the Western world."[13] In this connection Morgenthau also has the democratic tradition sharing responsibility for the 19th century wars of aggression, which is not only reminiscent of the conservative anti-liberalism of the Weimar Republic but of none other than Carl Schmitt. In American liberal culture, such a conception of "political

10. Cf. Dwight Waldo, *Political Science in the United States* (Paris: UNESCO, 1955), pp. 60-61; also, Bernard Johnson's interview with Morgenthau, *op. cit.*, p. 371.
11. Morgenthau, *Scientific Man versus Power Politics*, *op. cit.*, pp. 122ff.
12. *Ibid.*, pp. 115-116.
13. *Ibid.*, p. 67.

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realism" had no real chance for development.

This becomes clear if one considers what Morgenthau offers as a positive alternative to the liberal social and political science he so bluntly rejects: a type of political ontology as the philosophical basis of political realism. It remains suspended between a dogmatic claim and a historical argument: "Man is a political man by nature; he is a scientist by chance or choice; he is a moralist because he is a man. Man is born to seek power. Yet his actual condition makes him a slave to the power of others. Man is born a slave, but everywhere he wants to be a master. Out of this discord between man's desire and his actual condition arises the moral issue of power."[14] Morgenthau's seriousness about this foundation is underscored by the fact that he never shrank from corroborating the unchangeability of human nature with a central theological metaphor: "It is this ubiquity of the desire for power which, besides and beyond any particular selfishness or other evilness of purpose, constitutes the ubiquity of evil in human action."[15]

The foundations of political realism are clearly conservative. What did this mean in the context of American political science? After 1945 the trend toward a "science of politics" finally became dominant. This breakthrough took place in the shadow of the natural sciences — an empirical and above all qualitative method that had been developing since the 1920s. What Charles E. Merriam and Harold D. Lasswell, the theoreticians of the Chicago School, had formulated in the 1930s and 1940s — an empirical research method of political power — was both incorporated and radicalized into the behavioralist movement. Thus when Morgenthau arrived on the scene, the Chicago School had already forged its own "realism" as a paradigm in political science. Moreover, behavioralism was above all a revolution in that it sought to promote the "study of political behavior" as a solution to a tradition tied to the political philosophy of liberalism. It is precisely for this reason that, in spite of its ambivalence and apparent contradictions, Morgenthau's political realism should be understood as a counter-paradigm. One might even call it a conservative reformulation of a "prudent" liberalism — "An idealist in disguise, a somewhat conservative liberal revolt against other, imprudent liberals,"[16] as one of Morgenthau's recent critics has characterized it. This ambivalence not only determined Morgenthau's relation to American politics but also his

14. *Ibid.*, pp. 168-169.
15. *Ibid.*, p. 194.
16. Stanley Hoffmann, "Notes on the Limits of 'Realism'," *Social Research*, Vol. 48 (1981), p. 657.

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whole theoretical access to the world of the political — an access which one can equate with the rising radicalism of the outsider, the immigrant.

Morgenthau's theoretical counterrevolution was clear in his abrupt and deliberate return to traditional political philosophy. What was still somewhat defensively formulated in 1946 in *Scientific Man versus Power Politics* appeared as an offensive and positive program in 1958 in *Dilemmas of Politics*: "This book indeed assumes . . . not only the continuing value of the tradition of political thought for the contemporary world but also the need for the restoration of its timeless elements. It is especially concerned with the restoration of politics as an autonomous sphere of thought and action."[17] He not only calls attention to the deficiences of the dominant theory of political science — its theoretical eclecticism, its orientation to praxis and the paucity of its basic points of inquiry — but he also explicitly identifies his opponent to be the "behavioral revolution" of Lasswell & Co.[18] With Barrington Moore he saw this "new scholasticism" as the foremost manifestation of the "tragedy of political science and of philosophy in America." He did not shrink from such drastic epithets as "contradictory in terms" and "monstrosity,"[19] and defended "the importance of political philosophy for political science, the identity of political theory and political science, the ability of political science to communicate objective and general truth about matters political."[20] If this program posits an equation of politics and power, whose onto-theological status is not questioned, it can be seen as a determinate answer to the American "science of politics." One of the notoriously unsolved problems of the turn to a purely empirical analysis of power was the problem of values — the problem of the relation between politics and morality.[21] How Morgenthau posed this question and sought to solve it is instructive in terms of his integration into American social science in that he simultaneously took two extreme positions and could not be persuaded to mediate them.

On the one hand, political realism promotes a radical elimination of morality from politics and, as such, goes even further than the "science of politics" in its moral agnosticism. Morgenthau left no doubt about his understanding of politics and the obligation of political realism:

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17. Hans J. Morgenthau, *Dilemmas of Politics* (Chicago: University of Chicago Press, 1958), p. 3.
18. Cf. Harold D. Lasswell and Abraham Kaplan, *Power and Society: A Framework for Political Inquiry* (New Haven: Yale University Press, 1957).
19. Morgenthau, *Dilemmas of Politics*, *op. cit.*, pp. 19 and 22.
20. *Ibid.*, p. 32.
21. This is the starting point of Arnold Brecht, *The Foundations of Twentieth Century Political Theory* (Princeton: Princeton University Press, 1959).

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"There is a profound and neglected truth hidden in Hobbes' extreme dictum that the state creates morality as well as law and that there is neither morality nor law outside the state. Universal moral principles, such as justice or equality, are capable of guiding political action only to the extent that they have been given concrete content and have been related to political situations by society."[22]

On the other hand, Morgenthau utilized precisely this passage in 1958 to reproach Hobbesianism with formulations which gave his understanding of political science a radical-critical turn and even presented the political scientist with an existential contradiction: "A political science that is true to its moral commitment ought at the very least to be an unpopular undertaking. At its very best, it cannot help being a subversive and revolutionary force with regard to certain vested interests — intellectual, political, economic, social in general. For it must sit in continuous judgment upon political man and political society, measuring their truth, which is in good part a social convention, by its own. By so doing, it is not only an embarrassment to society intellectually, but it becomes also a political threat to the defenders or the opponents of the status quo or to both: for the social conventions about power, which political science cannot help subjecting to a critical — and often destructive examination, are one of the main sources from which the claims to power, and hence power itself, derives."[23]

This passage reveals the scientific seriousness and pathos for truth that distinguishes Morgenthau's theoretical work. The place of Morgenthau and of political realism in the history of political and social science cannot be established only from the standpoint of acculturation but also in terms of its inherent theoretical validity. One possible starting-point for considering the relation of his theories to those of other immigrants, and to American political science as a whole, is a comparison of the first three editions of *Politics among Nations*. In the 1954 edition he presented his now famous six principles of political realism; in the 1960 edition, the central idea of power was balanced by stronger emphasis on special interests and ideologies. The result was that "national interest" became more flexible through a closer association with the real history of nationalism. Ultimately, the construed model of the "balance of power" was strengthened in that the dimension of international morality and international law was no longer conceived exclusively as ideology. Overall, Morgenthau's characteristically

22. Morgenthau, *In Defense of the National Interest*, *op. cit.*, p. 34.
23. Morgenthau, *Dilemmas of Politics*, pp. 29-30.

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ambivalent starting-point reached an impasse in 1960. Was this process of theoretical clarification conditioned by the process of assimilation into American social science? What was an admirable development in terms of the theory itself was also a matter of a German-educated social scientist coming to terms with his adopted country: "While I have been professionally interested in politics, that is to say, the phenomenon of power, I have in my own personal life been rather indifferent to personal power. . . . It has simply been a part of my whole personality to be theoretically interested in power but not personally so.[24]

Morgenthau closed the retrospective on his life with this observation. Unanswered is whether this is an authentic self-revelation or a belated rationalization for past disappointments. His remarks dealing with his relations to the State Department do not attempt to conceal his bitterness. In fact, he was seldom directly consulted, especially when one considers how concrete and specific were his positions on American foreign policy. He was consulted by American officials at the end of the 1940s, but already by 1951 the State Department was ignoring his advice, probably in reaction to *In Defense of the National Interest*. The same fate befell him at the end of the 1960s, owing to his critique of American policy in Vietnam.[25]

More significant for an assessment of Morgenthau's influence on American foreign policy is that, after the 1950s, political realism was adopted by many people influential in foreign policy, even if not directly students of Morgenthau. Among the first to be mentioned is George Kennan, whose various political offices gave him a considerable role in the conceptualization of American foreign policy during the Cold War. The most outstanding case, of course, is Henry Kissinger, himself a German immigrant, who in 1969 became Secretary of State. Morgenthau's outlook was thus not only prominent in the 1970s, but Kissinger proved to be "the best Secretary of State since Dean Acheson and one of the six or so best we have had throughout our history."[26] Morgenthau basked in the reflected light of Kissinger not only during Kissinger's tenure as Secretary of State but also before, when he taught political science at Harvard University. The relation between Kissinger and Morgenthau cannot be exaggerated: "This theory [i.e., Kissinger's concept of a stable world order through an American policy of

24. Cf. Bernard Johnson's Interview with Morgenthau, *op. cit.*, pp. 385-386.

25. Hans J. Morgenthau, *Vietnam and the United States* (Washington DC: Public Affairs Press, 1965).

26. John G. Stoessinger, "The Statesman and the Critic: Kissinger and Morgenthau," in Thompson and Myers, eds., *Truth and Tragedy*, *op. cit.*, p. 236.

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strength] drew, in no small measure, on the concepts developed in Morgenthau's *Politics among Nations* that, by the time Kissinger reached power, had attained the status of a classic."[27]

Morgenthau's influence on American politics can also be gauged by examining how often he came in conflict with the official line, given his contradictory determination of the relation between politics and morality. His role was that of a political intellectual concerned primarily with the political public sphere. Such a role consists in the seminal and brilliant formulation of propositions, in the canonization of a particular viewpoint, because the tragic consciousness of the inescapable evil character of politics can only function as the dark side of an enormously impelling and unmistakable challenge to foreign policy as power politics. This was true for the 1950s even more than for later periods. The most outstanding example of this is Morgenthau's *In Defense of the National Interest*, where he revealed himself both a political *enfant terrible* and a loyal American patriot.

At first glance this book is exactly what its subtitle indicates: "A Critical Examination of American Foreign Policy." Its main sections outline four fundamental errors of this foreign policy — its utopianism, its legalism, its sentimentalism, and its subterranean isolationism. The analysis of the errors coalesce into a decisive warning: American foreign policy risks succumbing to a holy crusade, to a democratic messianism in the struggle against its major rival in world politics, the Soviet Union: "[However] it is but a small step from this belief in morally required omnipotence to the substitution of a crusade for a foreign policy." The Cold War had come so far "that diplomatic negotiations are the only alternative to war. . . . A negotiated settlement involves nothing but the recognition of the limits of the mutual interests and power. It is a pact with the inevitable, not an embrace between virtue and vice in which virtue must perish."[28] If one sees precisely how the path to peace should be taken, i.e., how both the superpowers' concurring national interests could be made compatible, then Morgenthau's abstract categorical construct becomes immediately concrete in the competition of interests that reveal traditional power politics.[29] Nothing could be clearer than Morgenthau's observation of a decisive

27. *Ibid.*, p. 223.

28. Morgenthau, *In Defense of the National Interest*, *op. cit.*, pp. 131 and 136.

29. Cf. Michael Joseph Smith, "Hans Morgenthau and the American National Interest in the Early Cold War," *Social Research*, *op. cit.*, pp. 775 and 780ff.; Kenneth W. Thompson takes the opposite view, see "The Cold War: The Legacy of Morgenthau's Approach," *Social Research*, *op. cit.*, pp. 660ff.

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turning-point, even of a "genuine catastrophe" in the latest development in East-West relations when the Soviet Union achieved nuclear parity and the US lost its military superiority. This fact, together with the propagandistic image of a defenseless Europe and of an aggressive red monolith in the East, was for Morgenthau a situation "to invite war rather than prevent it."[30] While the longing for peace in this analysis is clear, so is support of American power politics.

It is a commonplace to explain the postwar period in terms of the rise of the US in world politics. What American isolationists opposed at the beginning of the 1940s was already by 1947 (with the containment of communism, as well as the Marshall Plan and NATO) the official foreign policy line of even American conservatives. Whether one leans to the conservative or the revisionist explanation of the Cold War,[31] the rise and leading role of the US in the formation of the postwar world order is clear. If the US can be seen as embracing a conscious *Realpolitik* already by the 1940s, then Morgenthau's equation of politics and power, and above all his abstract concept of the national interest, was even more conservative than American foreign policy in 1951.[32] The conservative and even antidemocratic implications of his anti-communism and his political diagnosis become clear when one examines their effect on internal policy. In the concluding chapter of *In Defense of the National Interest*, Morgenthau takes a negative attitude toward the liberal safeguards of American democracy, and is primarily concerned with the extent to which the principle of the public sphere or the constitutional separation of powers hinders a resolute foreign policy. He also does not shrink from the unfortunate association with American nationalism. The enlightened analyst engaged in pathetic reminiscences of a heroic president, possible only on the basis of a strong America, raised the concept of the national interest to a mythical category for the present. He ends on an almost religious note: "By their own strength and wisdom they have awakened the strength and wisdom dormant in that slumbering giant, the American people. Today, the American people must take their fate in their own hands . . . . And, above all, remember always that it is not only a political necessity but also a moral duty for a nation to follow in its dealings with other nations but one guiding star, one standard for thought, one rule for action:

30. Morgenthau, *In Defense of the National Interest*, *op. cit.*, pp. 178 and 180.

31. Wilfried Loth, *Die Teilung der Welt 1941-1945*, Fourth Edition (Munich: Deutsche Taschenbuch Verlag, 1983), pp. 9ff.

32. See Richard J. Barnett, "In Search of the National Interest," in Thompson and Myers, eds., *Truth and Tragedy*, *op. cit.*, pp. 153ff.

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THE NATIONAL INTEREST."[33]

Morgenthau's plea for the American national interest is a singular document in the relation between science and politics in American postwar history. A courageous and sharply-reasoned criticism of American foreign policy is unexpectedly transformed into a hymn to the American nation. Precisely because of this juxtaposition, it is also an informative document in the history of German immigrants in America. Whatever the merits of this plea, it clearly exhibits a pathetic "we-style" — an indication of a kind of super-identification with America.

This antinomic and ultimately contradictory critique wrapped in conservatism is evident not only in Morgenthau's relation to American politics but also in his analysis of world politics. Here, again, *Politics among Nations* is the decisive source, where one finds the relevance of political realism and, above all, its extraordinary potential for diagnosing contemporary situations. From the mid-1950s, Morgenthau was very sensitive to the wave of colonial revolutions and saw them as a decisive intermediary factor in the East-West conflict: he meant intensified international conflicts resulting from unsolved old and new tensions. In 1960 he saw world politics dominated by three related tendencies: a nationalistic universalism turned aggressive through propaganda; the rapid progress of the colonial revolution; and a previously unknown intensification in the technology of war that made every war potentially a total war. His analysis of the global situation consequently focused on "the paramount concern of Western civilization . . . the preservation of international peace."[34]

To view the history of attempts at disarmament as "a story of many failures and few successes;"[35] might be seen as the expression of a justifiable scepticism and, to this extent, of an authentic political realism. The same can be said of the assessment of the extremely precarious balance of power in terms of the global security systems of two highly armed superpowers: "Under the assumptions of collective security, any war anywhere in the world, then, is potentially a world war. Thus a device intent upon making war impossible ends by making war universal."[36] Along the same lines, Morgenthau discusses the successes and failures of the United Nations and its supernational political institutions. Ultimately, they all become instruments of the global antithesis

33. Morgenthau, *In Defense of the National Interest*, *op. cit.*, pp. 241-242.
34. Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, Third Edition (NewYork: Alfred A. Knopf, 1960), p. 389.
35. *Ibid.*, p. 391.
36. *Ibid.*, p. 418.

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between East and West and, to the extent that this is the case, have become useless as mediums for the peaceful transformation to world government: "The international governmnent of the United Nations, stripped of its legal trimmings, then, is really the international government of the United States and the Soviet Union acting in unison. At best — if they are united — they can govern the rest of the world for the purpose of maintaining order and of preventing war. At worst — if they are disunited — there will be no international government."[37]

But, once again, such scepticism unexpectedly turns into something else. At first it demonstrates a contradiction in that Morgenthau, on the one hand, rejects supernational institutions as well as cultural internationalism as bad universalism and, on the other, comes down on the side of the traditional idea of a world state — a utopia which he presents as unrealistic: "There is, finally, no shirking the conclusion that, as there can be no state without a society willing and able to support it, there can be no world state without a world community willing and able to support it."[38]

The conservative tendencies are also evident in the concluding sections of *Politics among Nations*, where Morgenthau, under the heading "Peace through Agreement," offers what might be called *the* political-practical manifesto of political realism.[39] What was earlier denied on the level of international organizations appears now as the only realistic chance for world peace: the renaissance of diplomacy. Morgenthau nostalgically bemoans the loss of its classical expression (during the epoch of the European sovereign state) and does not completely deny its future — so long as it refrains from the evil that modern democracy brought with it, i.e., the compulsion to publicity, the tyranny of the majority, and the danger of fragmentation. Less pronounced than ten years earlier (*In Defense of the National Interest*) but no less obvious, political realism reveals itself as traditional power realism: the fate of world peace, also at the end of the 20th century, depends on the genius and assertiveness, the imagination and ability to compromise of great statesmen — an archaic stamp on a present that had thought it had left the past behind.

37. *Ibid.*, p. 481.
38. *Ibid.*, p. 513.

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# *The Rejection of Political Theology: A Critique of Hans Blumenberg**

Richard Faber

***Theology as Politics: Blumenberg vs. Schmitt***

In his sequel to *Political Theology*[1] Carl Schmitt explains that the present situation in political metaphysics can best be approached by way of Hans Blumenberg's "consistently de-theologized, modern *scientific* rejection of every political theology" in *The Legitimacy of the Modern Age*.[2] In the revised edition of his book Blumenberg answers Schmitt, insisting that modern political theory merely reclaims from the *sacred* language of theology what the *profane* abandoned to it;[3] that political theology is only the sum of a set of *metaphors* "whose selection reveals more about the character of the situations in which they are used than about the origin of the ideas and concepts employed in dealing with such situations."[4] Following the 1918 German revolution, the "latest political theologian" — Schmitt — characterized "Maistre's philosophy of the state as the 'reduction of the state to the moment of decision, and thus to a pure and absolute decision which does not reason or discuss, does not justify itself, but is created from nothing,' i.e., not from the secularization of the '*creatio ex nihilo*' but the metaphorical

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* Translated by David J. Parent. This is an edited version of "Von der 'Erledigung jeder Politischen Theologie' zur Konstitution Politischer Polytheologie: Eine Kritik Hans Blumenbergs" in *Religionstheorie und Politische Theologie*, Vol. I, *Der Fürst dieser Welt: Carl Schmitt und die Folgen*, Edited by Jacob Taubes (Munich, Paderborn, Vienna and Zurich: Wilhelm Fink Verlag/Ferdinand Schöningh Verlag, 1983), pp. 85-99. In most English translations, including those of Blumenberg and Benjamin, the term *Ausnahmezustand* is mistranslated as "state of emergency" rather than "state of exception." All such cases have been corrected in this article. The term "state of emergency" (*Notstand*) is a general category without any specific reference to an existing order because *necessitas non habet legem* (necessity knows no law); whereas the term "state of exception" is specific in that it presupposes a constitutional order. See also Richard Faber, *Die Verkündigung Vergils: Reich, Kirche, Staat: Zur Kritik der "Politischen Theologie"* (Hildesheim and New York: Olms Verlag, 1975).

1. Carl Schmitt, *Politische Theologie II: Die Legende von der Erledigung jeder Politischen Theologie* (Berlin: Duncker & Humblot, 1970), p. 109.

2. Hans Blumenberg, *The Legitimacy of the Modern Age* (Cambridge: MIT Press, 1983).

3. *Ibid.*, p. 104. Here Blumenberg is discussing specifically the Song of Solomon. The same, however, applies to "political theology."

4. *Ibid.*, p. 94.



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interpretation of the situation after the revolutionary zero-point."

Blumenberg is right in claiming that "political theology" conceals what is generally meant by "theology as politics." In this Machiavellian sense, political theology is a metaphorical theology: "The quasi-divine person of the sovereign possesses legitimacy, and has to possess it, because for him there is no longer legality, or not yet, since he has first to constitute or reconstitute it." The "enviable position in which the 'political theologian' places himself by means of his assertion of secularization consists in the fact that he finds his stock of images ready at hand and thus avoids the cynicism of an open 'theological politics'."[5] But he can do this only so long as the original religious sphere retains much of its validity and is not dominated, as the Christian sphere has been, by dysfunctional figures. Blumenberg cites a statement by Hitler (with which Schmitt must also have been familiar) that rejects Christianity *in toto* in order to replace it with a new *theologia publica*: ". . . it has been our misfortune to have the wrong religion."[6] To the extent that there was still a religious sphere in the first half of the 20th century, the notion was not completely off the wall, particularly if one understands religion before Christianity — not just decades but centuries before; and after the Enlightenment — after its "failure," which is precisely Blumenberg's point.

This was no simple defeat by an old or new opponent but rather a result of the (negative) dialectics of the Enlightenment itself. Blumenberg is no more in doubt about this than were Horkheimer and Adorno. As for the claim that political theology merely conceals that which is meant by theology as politics, he writes: "It can almost be assumed that a legal positivism must ally itself with that historical factor which removes the contingency of the positive establishment of perceptions. The relation of decisionism to legitimacy is based on the negation of voluntarism. It is something like the institutionalized instability of absolute power, because the basis of its 'existence' is that 'decisions' have already been made and appear as historical instances — as with Hobbes, where the contract of submission can never be one that remains to be closed but one whose stipulations need only be disclosed. As ahistorical as positivism is supposed to be, its logical consequence is that it must always find a reference point in the stock of historical verities. This is what makes the secularization thesis attractive to the theoretician of decisionism."[7] Blumenberg is also aware that this thesis is one

5. *Ibid.*, p. 101.
6. *Ibid.*, p. 604n. Cf. Albert Speer, *Erinnerungen* (Berlin: Propylaen Verlag, 1969), p. 110.
7. *Ibid.*, p. 98.

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of continuity and thus of tradition, whose principle has to do with origins.

Political theology should have always been called "political mythology," as Paul Tillich (anticipating Horkheimer and Adorno) realized even before 1933, when he dealt with political romanticism "[Tradition means both] derivation from an origin and subjugation to the authority of origin."[8] According to tradition, whose paradigm is the geneology of myth, "that which derives from origin . . . [should partake] of the unconditional power of origin."[9] When there is a break in tradition there is the facile "attempt . . . to recover the old, lost traditions."[10] Some traditions should be restored, but not subversive counter-traditions which breach the original authority — not the traditions of the Enlightenment, still awaiting their fulfillment: "The revolution itself had made its appearance in historical disguise, using the rhetoric of the great traditional legitimations — which are not necessarily a vehicle for substance — in order to perform 'the task of their time in Roman costume and with Roman phrases, the task of unchaining and setting up modern *bourgeois* society.'[11] In relation to the subject of secularization in particular, it is important to observe that in making their history, it is possible for men to use the gesture of a *creatio ex nihilo* 'romantically' and in such a way as to establish historical continuity; and on the other hand, it is possible for them to use historical mimicry in the service of innovation. 'And precisely when they appear preoccupied with revolutionizing themselves and things, with creating something that has never existed, precisely in such epochs of revolutionary crisis they anxiously conjure up the spirits of the past to their purpose, and borrow from them names, battle cries and costumes in order to present the new scene of world history in this time-honored disguise and this borrowed language.' Accordingly, what underlies the phenomena of linguistic secularization cannot be an extensively demonstrable recourse to theology as such; rather it is a choice of elements from the selective point of view of the immediate need, in each case, for background and pathos. The Revolution needed not only a reservoir of political

8. Paul Tillich, *Die sozialistische Entscheidung*, in *Gesammelte Werke* (Stuttgart: Evangelisches Verlagswerk), p. 253.

9. Klaus Heinrich, *Parmenides und Jona: Vier Studien über das Verhältnis von Philosophie und Mythologie* (Frankfurt a/M: Suhrkamp Verlag, 1966), p. 12.

10. Tillich, *Die sozialistische Entscheidung*, *op.cit.*

11. Karl Marx, "The Eighteenth Brumaire of Louis Bonaparte" in Karl Marx and Frederick Engels, *Selected Works in Two Volumes* (Moscow: Foreign Languages Publishing House, 1958), Vol. I, p. 247. [Tr.] Although Faber's references to Blumenberg are here changed to the English edition, all quotations from Marx and Engels will be to the above edition.

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expressions, but a pagan one; its strongest effects, indeed, were achieved in the nakedly laconic style of the great statements typified by the secularization decree of the National Assembly in 1789: '*Tous les biens ecclésiastiques sont à la disposition de la nation*' [All church property is at the disposition of the nation]."[12]

***"Technocracy": Benjamin vs. Blumenberg***

So far so good with Blumenberg's critique of Schmitt. Here, however, problems begin. Myth is the myth of origin; its authority is that of origin[13] or, "sociologically" speaking, of foundation and creation. This is the terminology of a *conservative* sociology which specifically concerns what Tillich has to say about conservative thinking in politics — that its root is the consciousness of the myth of origin. Its *ethic* decrees: "Might has right," which "is the only possible ethic to derive from a consistent myth of origin. But this is clearly no ethic but an assertion and unfounded designation of the same with the terms might and right."[14] The myth of origin *founders* on ethics taken seriously as the unconditional assertion of right. Ethics is "the root of liberal, democratic and socialist thinking in politics."[15] Is it also the root of action? This is the decisive question. Blumenberg even speaks of revolution, but of one in which negative dialectics was even materialistically concentrated: The nation having disposition over the goods of the church was the bourgeoisie; it alone constituted itself as the "nation." The French Revolution is the political revolution of an already socially dominant class. For Benjamin, however, it is equally important that: "The same leap in the open air of history is the dialectical one, which is how Marx understood the revolution."[16] Marx also said that every revolution which seeks to achieve something radically new in history carries the burden of the past on its back. This burden is what already exists — the restriction of preexisting relations[17]: Bourgeois revolutionaries used a strategy to shake off this burdensome nightmare: they performed their historical task in disguise. They borrowed

12. Blumenberg, *The Legitimacy of the Modern Age*, *op.cit.*, p. 93.
13. Heinrich, *Parmenides und Jona*, *op.cit.*, pp. 11-12.
14. Tillich, *Die sozialistische Entscheidung*, *op.cit.*, p. 240.
15. *Ibid.*, p. 228.
16. Walter Benjamin, *Illuminations*, Edited and with an Introduction by Hannah Arendt, Translated by Harry Zohn (New York: Harcourt, Brace & World, 1968), p. 263.
17. See K. R. Greffrath, "Der historische Materialist als dialektischer Historiker: Zum Motiv der Rettung in Walter Benjamins Thesen "Über den Begriff der Geschichte," in: Peter Bulthaup, Ed., *Materialien zu Benjamins Thesen "Über den Begriff der Geschichte"* (Frankfurt a/M: Suhrkamp Verlag, 1975), p. 217.

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the authority they lacked from the very past they wanted to oppose with something new. Why did they need the reinforcement of the past? Marx points to the limited content of the bourgeois revolution: "Every new class . . . achieves domination only on a broader basis than that of the class ruling previously."[18] In order to hide this restricted content, the bourgeois revolution used the heroic disguise of ancient Rome: ". . . its gladiators found the ideals and the art forms, the self-deceptions that they needed in order to conceal from themselves the bourgeois limitations of the content of their struggles and to keep their enthusiasm on the high plain of the great historical tragedy."[19]

19th century social revolutions had no limits. Their goal was not merely to change one form of domination for another but to abolish all forms of domination. Thus these movements needed no slogans to disguise their limited content, no anxious conjuring up of the past.[20]

Can Benjamin's saving of the past be equated with what Marx called the "resurrection of the dead" or the "conjuring up of the past?" Marx considers both these phenomena indications of a paucity of content, a means of self-glorification, a borrowed pathos to disguise the limitation of political goals. With Benjamin, however, it is not a matter of conjuring up the past, but of fulfilling it, of carrying out the demands which the past still makes on the present. For Benjamin, the Roman masquerade of the French Revolution, although it occurred under the command of the ruling class, is the image of a consciousness of history and of a revolutionary praxis which find their highest expression in the proletarian revolution.[21] Indeed, this latter revolution stands or falls to the extent that it achieves such recollections. Benjamin criticizes the Second International because it "thought fit to assign to the working class the role of the redeemer of future generations, in this way cutting the sinews of its greatest strength. This training made the working class forget both its hatred and its spirit of sacrifice, for both are nourished by the image of enslaved ancestors rather than that of liberated grandchildren."[22]

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18. Karl Marx and Frederick Engels, *The German Ideology* (Moscow: Progress Publishers, 1976), p. 69.

19. Marx, "The Eighteenth Brumaire of Louis Bonaparte," *op. cit.*, p. 248.

20. *Ibid.*, pp.249f. "The social revolution of the nineteenth century cannot draw its poetry from the past, but only from the future. It cannot begin with itself before it has stripped off all superstition in regard to the past. Earlier revolutions required recollections of past world history in order to drug themselves concerning their own content. In order to arrive at its own content, the revolution of the nineteenth century must let the dead bury their dead."

21. K. R. Greffrath, "Der historische Materialist als dialektischer Historiker," *op.cit.*, pp. 218-219.

22. Benjamin, *Illuminations*, *op.cit.*, p. 262. Benjamin includes this passage in the

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The eschatology is unmistakable; the messianism is explicitly mentioned several times. Elsewhere Benjamin comments that the "*tradition* of the oppressed [makes] the working class its savior."[23] This "tradition . . . teaches us that the 'state of exception' in which we live is not the exception but the rule.This insight must generate an appropriate concept of history. Then we shall clearly realize that it is our task to bring about a real state of exception, and this will improve our position in the struggle against fascism. One reason why fascism has a chance is that in the name of progress its opponents treat it as a historical norm."[24] For Blumenberg, as for Schmitt (whom Benjamin opposes with his concept of a 'real state of exception'), progress is still normative. In his sequel to *Political Theology*, Schmitt clearly recognizes this in his observation that the core of Blumenberg's philosophy of history is the "*progressive* process of scientific, technical and industrial development which either exploits the old (in proportion to advances in exploitation), ignores it as unexploitable or destroys it as disruptive and worthless."[25]

If one goes along with Schmitt, Blumenberg's "*progressive* process" might almost be equated with Marx' "complete hypothetical capitalist." Schmitt's value lies in the fact that he can be read against the grain (as Benjamin demonstrates).[26] From Blumenberg's perspective, such a reading brings Schmitt and Marx as well as other similar thinkers together. Aware of this, Schmitt maintains in the same passage that: "For an exact scientific cognition there is . . . also no *new* scientific political theology in the sense of a re-occupation of earlier theological positions, no democratic (to replace an earlier monotheism) and no *revolutionary* (to replace an earlier counter-revolutionary) political theology."[27] For Schmitt, who considers the question of who defines what is political decisive, this means that not only is theology beyond the pale in this perspective, but so is politics: There is no longer any political enmity. There are still conflicts of interest to be resolved, but no more basic antitheses

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same "thesis" in which he states that this conciousness had a brief resurgence in the Spartacist group, that "the last enslaved class" steps forth as the "avenger" which "completes the task of liberation in the name of generations of the downtrodden."

23. Walter Benjamin, *Gesammelte Schriften*, Vol.I, p. 246.
24. Benjamin, *Illuminations*, *op.cit.*, p. 259.
25. Schmitt, *Politische Theologie II*, p. 126.
26. See Ingeborg Maus, *Bürgerliche Rechtstheorie und Faschismus: Zur sozialen Funktion und aktuellen Wirkung der Theorie Carl Schmitts* (Munich: Wilhelm Fink Verlag, 1980). Maus pays "special attention. . . to that restorative bourgeois theory which at once appears to be the most progressive and relevant" (p.18). In Maus' view, "Carl Schmitt's theory of legal practice turns out to be (in a still greater degree) a juridical corollary of the monopolistic development of the economy that began in Germany long before" (p. 95).
27. Schmitt, *Politische Theologie II*, *op.cit.*, p. 124.

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requiring a *decision*. From the standpoint of the political, Schmitt's question to Blumenberg concerns "the reality of an enemy whose real possibility I still recognize in a totally de-theologized opponent."[28]

Blumenberg's answer to Schmitt begins with a legitimate critique of Hobbesian-Schmittian ideology: "Three centuries after the national state took on the pseudomorphic qualities of the absolute authority, it becomes evident that the projection of the category of enmity onto the relation between states is no longer a viable procedure, and even its further intensification in the all-encompassing antithesis of the East/West dualism has only been a short-lived interlude." Blumenberg concedes to Schmitt that "it is not impossible that this may cause internal conflict to take on a new and (this time) nondivertible intensity — unless [and this is Blumenberg's option] it turns out that the experiment of absolute authorities has been played through to its conclusion. When it is no longer possible to believe that the decision between good and evil is going to occur in history and is immediately impending, and that every political act participates in this crisis, the suggestiveness of the 'state of exception' [*Ausnahmezustand*] as the normal political state disappears."[29]

Blumenberg here appears to be opposing not only Schmitt but also Benjamin, who is as apocalyptic as Schmitt is anti-apocalyptic. As Taubes has shown,[30] Benjamin's apocalyptic analysis is correct. Blumenberg's "*progressive* process of scientific, technical and industrial development" (Schmitt) still exhibits technocratic features which were seen earlier in fascism,[31] and thus allows the "state of exception in which we live" to continue to be the rule. This process itself represents this state of exception; it is "a singular catastrophe." For this reason, it is our task to bring about the "real state of exception." It is more than true today — after the atomic bomb — that this revolution is the *emergency* break, as Benjamin said against Marx.[32] The Pauline-Tertullian-Schmittian *katechonics* is still possible only as a Messianic proposition. This has probably always been true. Benjamin's VIth "thesis" is also on the mark: "The Messiah comes not only as the redeemer, he comes as the subduer of Antichrist."[33]

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28. *Ibid.*
29. Blumenberg, *op.cit.*, p. 105.
30. Faber, *Der Collage-Essay: Eine wissenschaftliches Darstellungsform. Homage à Walter Benjamin* (Hildensheim: Gerstenberg Verlag, 1979), *op.cit.*, pp. 69-70.
31. Benjamin, *Gesammelte Schriften*, *op. cit.*, Vol. I, p. 274.
32. See Rolf Tiedemann's Postscript to Walter Benjamin, *Charles Baudelaire, Ein Lyriker im Zeitalter des Hochkapitalismus: Zwei Fragmente* (Frankfurt a/M: Suhrkamp Verlag, 1969), p. 189. Cf. Claus Offe, "Griff nach der Notbremse," *Die Zeit* (August 20, 1982).
33. Benjamin, *Illuminations*, *op.cit.*, p. 257.

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### *"Political Christology" vs. Political Polytheology*

As early as 1954 Schmitt identified the antichrist with Blumenberg's "progress" and himself as the "*katechon*."[34] This was the Schmitt who throughout his life braced himself for the struggle against Dostoevsky's "Grand Inquisitor" and identified himself with Donoso Cortés. In *this* sequence, the "*katechon* unknowingly carries on the work of the Antichrist, who is already ruling behind his back."[35] It is different with the "Christ" *katechon* of a political Christology à la Benjamin, which not only Schmitt[36] but Benjamin himself opposes — even at the price of an otherwise presumably "resolved" political theology (a *poly*theology which is supposed to escape the Schmittian definition of the political).

The formula "*nemo contra deum nisi deus ipse*" [No one can stand up to God save God himself][36] is also central to Blumenberg's work on myth, although he must have been made aware of it by Schmitt's characterization of it as "political Christology." Blumenberg knows that Goethe's fragment on Prometheus begins with his powerful maxim "*nemo contra deum nisi deus ipse*."[37] Blumenberg's "myth" is the myth of Prometheus. If not myth as such, he at least wants to bring *a* myth to a conclusion[38]: the politically motivated Promethean myth. For Blumenberg this myth is still what it was for the (later) Goethe — the "modern" myth of revolution *sans culottes*.[39]

If Prometheus and Lucifer are functionally identical ("both are torch-

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34. Schmitt writes as a representative of the "other Hegel line" in a later note to his essay, "Die Lage der europäischen Rechtswissenschaft (1943/44)," *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialen zu einer Verfassungslehre*, Second Edition (Berlin: Duncker & Humblot, 1973), p. 429. "Both [Savigny and Hegel] were genuine keepers, *katechoners* in the concrete sense of the term, retarders of the voluntary and involuntary accelerators on the way to total functionalization." ". . . nothing justifies making Hegel into an absolute accelerator whose negation is nothing but movement and whose movement is nothing but negation, i.e., into total movement."

35. See Frithard Scholz, "Die Theologie Carl Schmitts," *Religionstheorie und Politische Theologie*, Vol. I, *Der Fürst dieser Welt: Carl Schmitt und die Folgen*, Ed. by Jacob Taubes (Munich, Paderborn, Vienna and Zurich: Wilhelm Fink Verlag/Verlag Ferdinand Schöningh, 1983), p. 173. Schmitt first used the *katechon* formula in *Das Reich* (April 19, 1942). Here it is applied to the USA as a "delayer" of (not the least, a German) "*Grossraum* order." It is such, however, an "accelerator against its own will," as the title suggests.

36. Cf. Schmitt's Postscript to *Politische Theologie* II, *op.cit.*, p. 122.

37. Hans Blumenberg, *Arbeit am Mythos* (Frankfurt: Suhrkamp Verlag, 1980), p. 31.

38. Blumenberg, *Arbeit am Mythos*, *op.cit.*, pp. 679ff.

39. Blumenberg cites Goethe's letter to Seebeck of December 30, 1819 (*Ibid.*, p. 460) and his letter to Zelter of May 11, 1820: This myth "was received as a gospel by our revolutionary youth, and elicited from the high commissions in Berlin and Mainz a disapproving frown at these childish pranks." Cf. Blumenberg, *Arbeit am Mythos*, *op.cit.*, p. 633. Goethe was supported on this by the young Marx, who wanted Prometheus as "the most prominent *saint* and *martyr*" in an imaginary "philosophical calendar."

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bearers of disobedience to the reigning god"[40]), this must be understood in terms of *political* theology or, rather, political *Christology*, as the words "disobedience" and "reigning" immediately suggest. Goethe's projection of a Promethean aura to the emperor does just that, but only after Napoleon sought to replace God (or destiny) with politics, "and indeed himself as politics." Only for awhile was Napoleon *the* only god who could have been overcome by another God. After his fall, Goethe's powerful maxim could only be read "in the unreal mode of melancholy": "Only a god could have competed with another god." But Goethe, for whom the image of the humiliated and finally dying emperor became the frightful realization of the maxim that politics as destiny becomes the destiny of its author, observed that, in the meantime, a *generation* had arisen which, had he complied, would have impelled him to become a member of a Jacobin club. Napoleon was the first to make politics the destiny. When he settled accounts with *Junges Deutschland* during his conversations with Eckermann, Goethe recalled what Napoleon said to him in Erfurt Castle — what even then, despite his experiences after Jena, he could hardly accept, i.e., that ". . . politics is destiny."[41]

To the extent that Goethe now agreed with Napoleon, he admitted that *Junges Deutschland* was determining the fate of the present. What is decisive here, however, is Goethe's recognition that a dualistic interpretation of the powerful maxim is even more powerful historically, no matter how disastrous. In terms of Goethe's biography, *Junges Deutschland* held to the view that Prometheus was the son of Zeus "out of ignorance of the real myth" (as the *Sturm und Drang* Goethe had it in his dramatic fragments). Yet this had not only generated results; his earlier Prometheanism as well as his later powerful maxim had been qualified Christologically, but in a heretical way. Blumenberg refers to Schmitt's sequel to *Political Theology*, to his discovery of one of Lenz' dramatic fragments.[42] In Lenz' "Catharina von Siena," as in Goethe's "Prometheus," writes Blumenberg, "the theme is not one god and his possible self-alienation, but rather two gods, . . . the *dualism* of the creator and the savior, the demiurge and the human god, the binding father and the delivering son."[43]

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40. *Ibid*, p. 493.
41. *Ibid*., p. 526.
42. Schmitt, *Politische Theologie II*, *op.cit*., p. 123.
43. Blumenberg, *Arbeit am Mythos*, *op.cit*., p. 581. It is beyond the scope of this article to examine the difficulties of orthodox Christology since late antiquity, by which Blumenberg expressly arrives at Schmitt's "Concept of the Political": "Sonship. . . inevitably [becomes] enmity under the *idealistic* postulate of autonomy." In Schmitt's and apparently also in Blumenberg's opinion, Goethe's "Prometheus" deals with a

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The Christological interpretation of Goethe's "Prometheus" naturally means its Christianization in the history of religion (and philosophy). Again agreeing with Schmitt, Blumenberg is right in claiming that: "Metaphysical dualism is . . . not the threat resulting from the reduction of polytheism; it is much more the result of the self-division of a monotheism which cannot cope with the problem of justifying its god against the reproach that the world is incompatible with his concept."[44] In his "Catharina" Lenz draws only on the *deus contra deum* of Aeschylus (from *Choephoroi*). But there it "refers to the conflict of the gods of the state and the gods of the family . . . a constellation . . . of the historical replacement of the generation of gods," i.e., "gods against gods . . . the principle . . . of the genealogies of myth, of the antithesis of above and below in them."[45] It is the unifying principle of *many* gods, whose multiplicity already hinders dualism — especially the monotheism it presupposes. At least this is Blumenberg's thesis. Even as he condemns monotheism for its inherent absolutism and *political* dualism, he pleads for polytheism on political grounds.

As we have seen, Blumenberg does not want to exclude the Schmittian Christological (or, better, dualistic) reading of "*nemo contra deum nisi deus ipse*," but he insists on Goethe's pantheistic, *poly*theistic reading. Concerning the passage in *Poetry and Truth*, which concludes with the "powerful maxim," Blumenberg writes: "Only the whole universe is a match for a demonic-divine nature [such as Napoleon's], which can overcome all individual powers in the universe. The *universe* is the absolute, whose domination cannot be shaken by what occurs within it." Thus the thesis: "From this perspective it becomes clear that the 'powerful maxim' deals with equivalencies in a pagan *pantheon*, but which simultaneously can also be surpassed by a contiguous conception which Spinoza's absolute introduces as a singular magnitude in the mythical context."[46]

Even this "singular" magnitude is internal to myth; the universe is only *primus et summus inter pares deos* [first and supreme among equal gods]. Nevertheless, what is most fascinating for Blumenberg in terms of *political* theology is precisely this plurality. It already follows from the fact that *deus* is not capitalized and from the indefinite article that the powerful maxim alludes to many, or at least two gods. Blumenberg translates correctly "*nemo contra deum nisi deus ipse*" into "only a god

"political theology," at least if the "stage play" is read politically.

44. *Ibid.*, pp. 625-626.
45. *Ibid.*, p. 580.
46. *Ibid.*, p. 569.

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against a god," which does not exclude other readings but (from the later Goethe's viewpoint) proves them to be heretical. Already in "Pandora," and with clear reference to the early "Prometheus," Goethe is concerned with "a pantheon, an agency for the separation of powers in Goethe's new favorite word: 'balance'."[47] To further emphasize this point in the sense of Blumenberg's "metaphor": Goethe strives for a pantheon for the sake of a "balance of *powers*." Riemer's diary entry, which must be dated around May 16, 1807, i.e., shortly after Jena and Auerstädt, expressly states: "A god can only be balanced by a god. To presume that power should restrict itself is absurd. It can be restricted only by another power. This specific being cannot restrict itself; only the self-determined whole can thereby restrict itself, but not the individual."[48]

According to Blumenberg, Goethe renounces the Promethean idea *through* the idea of balance, which was later condensed in the powerful maxim and found its poetic expression in the same year as "Pandora." It concerns the mythical principle of the *separation* of powers, as well as "the pantheistic possibility of reconciliation, which sees every individual and particular power as specifications of the whole and restricts itself in the process of self-realization. Spinozaism is not replaced by polytheism, but is rather limited to its aesthetic and historical self-representation."[49] But is pluralism also thereby freed of conflict and *obligated* to communality? Blumenberg writes: "Gods, by virtue of the fact that they are many, have their spheres of authority among themselves, the system of their strengths and weaknesses. In that they are originally forces and powers, they are by nature limited only by other forces and powers."[50] However, completely disregarding the respective spheres of authority, Blumenberg also writes: "The world is so divinely arranged that each in his position, place and time balances everything else." Does this not sound a little static, even feudal — stemming perhaps from pluralism's general tendency to organicism? At any rate, Blumenberg explicates this "theologically": "The secret potential of Spinozaism, which still shines through in the fourth part of *Poetry and Truth*, is that Goethe allows the Gods to speak only insofar as they are 'phenomena' like everything else relative to ultimate substance."[51]

The point is that Goethe himself was a *social* organicist, and always in an authoritarian sense, precisely where he represents an "*authoritarian*

47. *Ibid.*, p. 553.
48. *Ibid.*, p. 573.
49. *Ibid.*, p. 575. See also pp. 583-584.
50. *Ibid.*, p. 597.
51. *Ibid.*, p. 598.

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liberalism."[52] It is wrong to assume that this is nothing more than a manifestation of the crisis of liberalism. Since Hobbes, the father of liberalism, its program has been economic freedom based on state coercion. Only in late capitalism has it become necessary to protect "economic liberalism," even against the bourgeoisie, with authoritarian means — at least in Hayek's unrestricted form. Hayek is relevant here because Marquard quotes him approvingly — the same Marquard who not only cites Helmut Schelsky, but also regrets the replacement of "freedoms" by "freedom."[53]

Marquard's view of the feudal order can be interpreted in different ways. There is no doubt, however, that he is an advocate of a "real existing pluralism," and that is already problematic since real pluralism not only does not *exist*, but *objectively* tends to support a feudal order.[53] In "Lob des Polytheismus" Marquard leaves no doubt that he is interested in polytheism as pluralism, and goes so far as to make explicit what Blumenberg only implies. In matters of political *poly*theology, Marquard is Blumenberg's public spokesman.[54]

This is Marquard's basic thesis: "The modern — profane, innerworldly — aggregate state of polytheism is the political separation of powers: it is enlightened, secularized polytheism. It does not begin with Montesquieu, Locke or Aristotle. It begins already in polytheism: as the separation of powers in the absolute through the pluralism of the gods."[55] But the Homeric gods represented the same kind of oligarchy as those Greek princes who waged a self-destructive war against Troy. Polytheism is an "oligotheism" which, as such, can be certain of its downfall. The question in theological as in political matters is whether it is the hour of the monopoly or of the commune; the hour of Caesar or "of freedom."

As a political polytheologian, in contraposition to such political monotheologians as Carl Schmitt and Rüdiger Altmann, Marquard cannot recognize that real pluralism *has long* since become integralism.

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52. Richard Faber, "Parkleben: Zur sozialen Idyllik Goethes," in *Goethes Wahlverwandtschaften: Kritische Modelle und Diskursanalysen zum Mythos Literatur*, edited by N. W. Bolz

53. Odo Marquard, "Politischer Polytheismus auch eine politische Theologie?," in Taubes, *Religionstheorie und Politische Theologie*, Vol. I, *op.cit.*, p. 82. Cf. also Odo Marquard, "Lob des Polytheismus: Über Monomythie und Polymythie," in *Philosophie und Mythos: Ein Kolloquium*, Edited by H. Poser.

54. Conversely, Blumenberg has good reason for arguing that Marquard's motto ("*nihil contra deum nisi plures dei*") is philologically determined by Goethe.

55. Elsewhere Marquard speaks à la Carl Schmitt of a "secularized polytheism of the separation of powers" in "Lob des Polytheismus," *op.cit.*, p. 55.

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The Schmitt school, on the other hand, demonstrates a "realism" of power which does not exclude the fact that their (necessarily affirmative) critique of ideology is not also limited. The Schmittians do not recognize that the integralism which they detect is an (immediate) prelude to monopolism.[56] This would require a dualistic theory of the class struggle, accessible only to those whom Schmitt denounces as *new* political theologians, i. e., political Christologists — the theologians of *revolution* whom Schmitt, Blumenberg and Marquard all condemn. (For all three, the 1968 events were shocking.)

For his part, Schmitt recognizes that "the core structural problem of the gnostic dualism of God as Creator and Redeemer [is . . . ] ineluctably and unavoidably immanent in every world in need of change and renewal": "The master of a world in need of change, that is, of a world gone wrong (because the master of this world has resisted change) and the Liberator, who brings about this change, cannot well be friends in this new world. They are, so to speak, *natural* enemies."[57]

As Marcuse put it in his 1975 lecture on the New Left, "The necessity of socialism again stands *opposed* to fascism. The classical alternative, 'socialism or barbarism,' is today more real than ever,"[58] to which Benjamin already provided a concrete answer in his early philosophical dictum: "Whether the bourgeoisie wins or loses in this or that struggle is of no consequence, since it is condemned to fail through the development of its own internal contradictions. The question is only if it will fail on its own or be ruined by the proletariat. The answer to this question will decide the continuance or the end of three thousand years of cultural development."[59] In the atomic age, history, humanity and life itself are at stake. The danger of global self-destruction is from a global civil war, but the salvation of the world is not to be expected in that context (if this war be understood as the "East-West conflict"). "If salvation comes" it will come from "where the danger is" or: "*nemo contra hominem, nisi homo ipse.*"[60]

Benjamin summed it up: "Marx said that revolutions are the locomotives of world history. But perhaps it is the exact opposite. Perhaps

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56. *Ibid.*, pp. 53,54 and 83f.
57. Schmitt, *Politische Theologie II*, *op.cit.*, pp.120-121.
58. Herbert Marcuse, *Zeit-Messungen: Drei Vorträge und ein Interview* (1975), p. 48.
59. Walter Benjamin, *Einbahnstrasse* (Frankfurt a/M: Suhrkamp Verlag, 1969), p. 76.
60. See Carl Schmitt, *Politische Theologie II*, *op.cit.*, p. 126. Concerning my application of Schmitt's translation (which is no doubt filtered through Feuerbach's profanization, or better humanization: "*homo homini deus*"), see Günther Anders, *Endzeit und Zeitenende: Gedanken über die atomare Situation* (Munich: Beck Verlag, 1971).

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revolutions are the emergency brakes that the human race is reaching for."[61] From the standpoint of the philosophy of history, Benjamin is "*à l'ordre du jour* — which day happens to be the Day of Judgment." Political cosmopolitans like Blumenberg and Marquard, however, seek to fit comfortably in the liberal restoration, as did the former Minister of State, Goethe, in Metternich's time. We can say of them what Horkheimer already in 1938 said of the different functions of early-modern as opposed to pre-fascist scepticism.[62] I mention this because Marquard is a commited sceptic. Here Horkheimer: "[Until today] scepticism does not stand the test of a rational way of thinking *in that* it abolishes itself and consciously becomes its own opposite — belief in the concrete possibilities of humanity. Instead of resisting prevailing conditions, it accepts them with scepticism, with inner reservations, and apparently unchanged, continues to exist as scepticism. To this extent, it has already lost its capacity and ceased to be a form of spirit. *The ego can only affirm itself by seeking to affirm humanity as a whole.*"[63]

Whoever wants merely to survive, with no thought of others, will fail to achieve even that. Goethe's "art of survival"[64] was no art of *life*, except as "life in a *park*."[65] The contemporary "anarch," however, exists in an epoch completely different from that of Goethe. Today it is no longer possible to be a mere "observer" of historical events. Even the "anarch" does not escape "total mobilization." "Neutrality in the struggle against leaders and bureaucracies, resignation to the conditions of the authoritarian state in the 20th century *means* participation in total mobilization" after 1945 as before 1933.

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61. Benjamin, *Charles Baudelaire*, *op.cit.*

62. Max Horkheimer, "Montaigne und die Funktion der Skepsis," in Horkheimer, *Kritische Theorie: Eine Dokumentation*, Edited by Alfred Schmidt (Frankfurt a/M : S. Fischer Verlag, 1968), Vol. II, pp. 201ff.

63. Horkheimer, "Montaigne und die Funktion der Skepsis," *op.cit.*, p. 234.

64. Hans Blumenberg, *Schiffbruch mit Zuschauer: Paradigma einer Daseinsmetapher* (Frankfurt a/M: Suhrkamp Verlag, 1979), pp. 47ff.

65. See Faber, "Parkleben: Zur sozialen Idyllik Goethes," *op.cit.*

66. Horkheimer, "Montaigne und die Funktion der Skepsis," *op.cit.*, pp. 234-235.

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## Notes and Commentary:

# *Return of the Foe*

G. L. Ulmen

"It is no wonder that the old English word *foe* has awakened from its archaic four-hundred year slumber and in the last two decades acquired again general currency beside the word *enemy*. How is it possible, in an age that simultaneously produces the nuclear means of destruction and blurs the distinction between war and peace, also to obstruct serious consideration of the distinction of friend and enemy? The great problem is still the containment of war, and this is either a cynical game, the arrangement of a dogfight, or an empty self-delusion if it is not, from both sides, bound with a relativization of enmity."[1]

When Carl Schmitt published these lines in his 1963 "Foreword" to *The Concept of the Political*, he included them under the heading "Continuation of the Answer" — which he had done in *Theorie des Partisanen*,[2] published the same year, where he traced the development from the "real enemy" to the "absolute enemy": foe. The immediate reason for this continuation was what Schmitt himself termed a lacuna (*Lücke*) in his thesis, drawn to his attention by George Schwab and Julien Freund.[3] In retrospect, the reason for

1. Carl Schmitt, *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien* (Berlin: Duncker & Humblot, 1963), pp. 18f.

2. Carl Schmitt, *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen* (1963), Second Edition (Berlin: Duncker & Humblot, 1975).

3. Schwab's contact with Schmitt began in 1957; Freund's, in 1959. Both were then graduate students, both interested in the significance and further elaboration of "The Concept of the Political"; both impressed upon Schmitt the role of ideology. But it was Schwab who specifically focused Schmitt's attention on the concept of the *foe*.

Freund's dissertation acknowleges the guidance of both Schmitt and Freund's teacher, Raymond Aron: *L'essence du politique* (Paris: Librairie du Recueil Sirey, 1965). See particularly pp. 428ff. and 478ff. See also Freund's Preface to Carl Schmitt, *La notion du politique/Théorie du partisan* (Paris: Calmann-Lévy, 1972). Schwab's dissertation, completed in 1962, was torpedoed at Columbia University by one of Schmitt's former students, Otto Kirchheimer. Only after Kirchheimer's death was Schwab allowed to complete another dissertation, but not on Schmitt. His original dissertation appeared under the title: *The Challenge of the Exception: An Introduction to the Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970). See particularly pages 51ff. Schwab's most important statement of his views appeared in "Enemy oder Foe: Der Konflikt der modernen Politik," *Epirrhosis: Festgabe für Carl Schmitt*, Edited by Hans Barion, Ernst-Wolfgang Böckenförde, Ernst Forsthoff, and Werner Weber (Berlin: Duncker und Humblot, 1968), Vol. II, pp. 665-682. See Schwab's article in this issue.



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this lacuna in Schmitt's original thesis was less that the German word *Feind* lacks the distinction of the English *enemy* and *foe* than that, as a jurist, Schmitt sought his answer in jurisprudence rather than ideology, which is extraneous to juridical thinking. This is clear when we examine Schmitt's various attempts to come to grips with the most extreme antithesis of friend and enemy — friend and foe.

Schmitt's essay deals with the concepts of the *state* and the *political*, *war* and the *enemy*. The question posed is how to cope with politics and war when the equation of state=politics becomes blurred. So long as the state was a clear and unequivocal entity confronting non-political groups and affairs — so long as the state retained the monopoly on politics — the enemy was clearly the *public* enemy[4] and wars were wars between states. Once the qualitative distinction between state and society became blurred, as it did after 1848, and once the democratic identity of state and society became a fact, as it did in Germany after 1918, Schmitt sought a new answer in the concept of the political itself. Once there was no longer any political entity to correspond to the political, there was nothing left but the utmost *intensity* of union or separation, association or dissociation — friend or enemy.

Recognizing that the relational field of politics changes continually in accordance with alliances and disruptions of forces and powers, Schmitt focused on the fundamental change that had taken place. The classical European state, i.e., the European system of states, brought to an end the concept of a "just war" that had been promoted by both sides of the confessional civil wars of the 16th and 17th centuries. It was able to create internal peace through *police* power and to elevate *politics* to the relation between sovereign states. In the sphere of politics, three concepts dominated: friendship, enmity and neutrality. All three contributed to the containment of war within an international law. In 1963 Schmitt wrote: "The epoch of the state is coming to an end, and with it the whole superstructure of concepts determined by the state, which created a Eurocentric science of international law that lasted 400 years. The state as a model of political unity, as the bearer of the most astounding of all monopolies, namely the monopoly of political decision, this splendid achievement of European form and occidental rationalism has been dethroned. But its concepts have been retained and have even become *classical* concepts."[5]

Schmitt acknowledged that the word *classical* sounds ironic today. Nevertheless, he employed it to emphasize a model — a system which allows the possibility of distinguishing the internal and the external, war and peace, military and civil (during war), neutrality and non-neutrality — a system where nothing is blurred. Perhaps most important in this system is the *relativization* of enmity.

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4. *Hostis*, as opposed to the private enemy: *inimicus*.

5. Schmitt, 1963 Foreword to *Der Begriff des Politischen*, *op.cit.*, p. 10. Cf. Schmitt's Foreword to the Italian edition, *Le categorie del 'Politico'*, Edited by Gianfranco Miglio and Pierangelo Schiera (Bologna: Società editrice il Mulino, 1972).

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Even in war, the enemy has a legal status: he is no criminal. Only this determination allows the possibility of containing war by international law. It also allows the possibility of ending war with a peace treaty, usually containing an amnesty clause. Moreover, such a clear distinction of war and peace is possible only so long as there is also an unequivocal status of neutrality. For Schmitt, the post-WWI and WWII blurring of the distinction between war and peace was the result of abandoning the concept of the "just enemy" and returning to the concept of the "just cause" of war.

Schmitt's emphasis on war and the enemy has led to numerous misunderstandings of his motives and his thinking. Much of this confusion is the result of reading his works with false preconceptions or, as in the case of his treatise on *Political Romanticism*, claiming he means the opposite of what he says. But if one reads what Schmitt actually writes, it is clear that he is neither promoting war nor enmity but attempting to answer a very real question raised by the decline of the state. As Schmitt notes, it is irrelevant whether or not one accepts the friend-enemy antithesis, since it is undeniable that nations continue to group themselves accordingly and that it remains an ever-present possibility in the political sphere: "The core of the political is not enmity but rather the distinction of friend and enemy which presupposes both friend *and* enemy."[6] The key to the concept of the political is thus not enmity but the *distinction* itself. The most dangerous situation arises when this distinction is blurred, which results in the blurring of the distinction between war and peace.

Throughout the 1920s Schmitt grappled with this situation. In the 1930s he published an essay on "Total Enemy, Total War, Total State"[7] and a corollary dealing with the relation between the concepts of war and the enemy.[8] In his essay Schmitt observed that all epochs have witnessed "total war" in some fashion, but that a theory of "total war" has existed only since Clausewitz, who distinguished between "abstract" and "absolute" war. Then appeared what Schmitt called the theory of the "total state" — the fascist state, which became linked with the concept of "total war." After the appearance of Schmitt's *The Concept of the Political* in 1927, with its at least implicit concept of the "total enemy," the conceptual series was complete. But even given the nature of the fascist "total state," and even though Schmitt maintained that "total war obtains its essential meaning from the total enemy," his frame of reference remained Eurocentric international law (with all that this implied). His concepts of "total war" and "total enemy" derived from the distinction between the continental and Anglo-Saxon concepts of war — between a land and a sea war, the latter being a war against the economy of the opponent, i.e., a war against

6. Carl Schmitt, *Theorie des Partisanen*, *op.cit.*, p. 93.

7. Carl Schmitt, "Totaler Feind, totaler Krieg, totaler Staat (1937)," in Schmitt, *Positionen und Begriffe im Kampf mit Weimar—Geneva—Versailles 1923-1939* (Hamburg: Hanseatische Verlagsanstalt, 1940), pp. 235-239.

8. Carl Schmitt, "Über das Verhältnis der Begriffe Krieg und Feind (1938)," in Schmitt, *Positionen und Begriffe*, *op.cit.*, pp. 244-251; reprinted as Corollarium 2 in *Der Begriff des Politischen*, *op.cit.*, pp. 102-111.

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noncombatants. As he writes: "A true religious war makes soldiers the tools of priests or preachers. Total war, which derives from economics, makes them tools of dominant economic power groups."[9]

In Schmitt's corollary he came closer to the heart of the matter. Accepting the distinction between "act of war" and "state of war," he indicated that "total war" must be total in both instances to be really *total*, which presupposes the concept of enmity and thus reveals that "total war" can only be defined in terms of total enmity. Noting that it was often said that Europe "stumbled into war" in 1914, Schmitt retorted that in reality it had "slid into total war" in the sense that the antithesis of continental military combat and Anglo-Saxon extra-military warfare (sea blockade and economic sanctions) was intensified into "total war" through reprisals. In this case, "total war" did not derive from a prior total enmity but rather the reverse, total enmity derived from the transition to "total war." The ending of such a war was not followed by "peace" or a "peace treaty" in the sense of international law, but a damning judgment of the vanquished by the victors. This development changed the concept of the enemy and portended even more serious consequences.

In the postwar politics of the League of Nations the aggressor became the enemy, and once aggression became unlawful, the aggressor-enemy became a criminal. While most jurists considered the criminalization of aggression and the aggressor a legal advance in international law, they did not realize the deeper significance in terms of the concept of the enemy. Schmitt did, and in so doing also recognized the blurring of the concepts of war and peace. When war and enmity are the determining concepts, what is not war is *eo ipso* peace, and who is not the enemy is *eo ipso* friend. When peace and friendship are the given and normal situation, what is not peace is war and what is not friendship is enmity. In the first case, the friend is the non-enemy; in the second, the enemy is the non-friend. But the concept of friend as merely a non-enemy evolved the criminal concept of "enemy acts against friendly states" and other confusions. Thus the question of which concept — friend or enemy — determines the other is fundamental. It was war that determined the concept of peace and allowed the containment of war in the international law of the *jus publicum Europaeum*. Moreover, the distinction of war and peace was absolutely and mutually exclusive, i.e., from neither side was a third possibility conceivable. But once the distinction was blurred, it allowed such a situation as that between Japan and China in 1931-32, which raised the question of whether military reprisals are consistent with a state of peace. Schmitt saw this *nihil medium* as challenging the concrete order of peace and as the direct result of the confusion of war and peace. This situation, said Schmitt, was abnormal, but such abnormal situations exist, as that between war and peace or where the two are mixed.

In his analysis of the Versailles Treaty, Schmitt contends that every *dictated*

9. Schmitt, "Totaler Feind, totaler Krieg, totaler Staat," *Positionen und Begriffe*, *op.cit.*, p. 237.

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peace attempts to make peace into a "continuation of war with other means." Such an extension of the concept of the enemy not only dissolves the distinction between combatants and noncombatants but even the distinction between war and peace. In such a situation *between* war and peace, no rational determination of one concept by the other is possible. Practically, however, the alternatives of war and peace become even more important owing to the legal fiction that everything that is not peace is war or everything that is not war is peace. This is, said Schmitt, the famous "pole with two ends," whereby one can argue from both. All attempts to come to a definition of war in this situation must at best end in a subjectivistic and voluntaristic decisionism. And it is precisely this decisionism that will determine the situation — even here it is the "immediate criterion of the political." Whatever the legal fiction, enmity —the *animus hostilis* — is the primary concept.

In a situation between war and peace this concept has nevertheless a different significance than before. In particular, "total war" suspends the distinction of combatants and noncombatants in that it embraces both military and nonmilitary (economic, propaganda, etc.) warfare as the product of enmity. As Schmitt explains, the suspension (*Aufhebung*) of the distinction of combatants and noncombatants is (in the Hegelian sense) *dialectical* — it is not so much that the earlier noncombatants are simply transformed into combatants in the former sense, but that *both* are transformed, whereby war is raised to a level that a purely military acknowledgment of enmity would not effect. Thus the totalization consists in the inclusion of extra-military factors (economics, propaganda, psychic and moral energies of noncombatants, etc.) into the realm of hostilities: "The step beyond the purely military is not only a quantitative extension but also a qualitative expansion. This is thus no mitigation but rather an intensification of enmity. Even the mere possibility of such an intensification makes the concepts of friend and enemy themselves again political and there also, where the political character had completely faded, they become free of private and psychological idioms."[10]

*Theorie des Partisanen* is no such corollary of *The Concept of the Political* but an independent work which consistently develops the distinction of friend and enemy. As a treatise on guerrilla warfare, it deserves to take its place with other classics in the field.[11] But here our focus is less on guerrilla warfare as such, than its role in the transformation from the real to the absolute enemy. In examining "modern" theories of the partisan, Schmitt observes that there are no pre-modern theories because there was no place for the partisan (in the modern sense of the term) in the classical theory of war. The reason for this is that both his essence and existence is conceived outside any containment of war: "The modern partisan does not expect from his enemy either law or grace. He has

10. Schmitt, "Über das Verhältnis der Begriffe Krieg und Feind (1938)," *Der Begriff des Politischen*, *op.cit.*, p. 110.

11. Cf. Julien Freund, "Der Partisan oder der kriegerische Friede," to appear in *Carl Schmitts Stellung in den Rechts- und Geisteswissenschaften des 20. Jahrhunderts*, Edited by Helmut Quaritsch (Berlin: Duncker & Humblot, 1988).

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rejected the conventional enmity of restrained and contained war and entered into another sphere of real enmity, which through terror and counter-terror advances to the point of annihilation."[12]

Schmitt comes to the crux of the distinction in the transition "from Clausewitz to Lenin," where he observes that Lenin was the first to conceive the partisan as the most important figure of national and international wars. In *The Concept of the Political* Schmitt notes that "the most conspicuous and historically most effective example [of a friend-enemy grouping] is the antithesis formulated by Karl Marx: bourgeoisie and proletariat. This antithesis concentrates all antagonisms of world history into one single final battle against the last enemy of humanity."[13] Once a class in the Marxian sense ceases to be something purely economic and becomes a political force, Schmitt argues, the real battle is then no longer fought according to economic laws but rather in terms of political necessities. Nevertheless, in Schmitt's view Marx was still too much grounded in European culture to push his argument to the limit. Thus even in *The Concept of the Political* Schmitt understood at least the rudiments of the distinction between the real and the absolute enemy: "Hegel wandered to Moscow via Karl Marx and Lenin. His dialectical method became established there and found its concrete expression in a new concrete enemy concept, namely that of the international class enemy, and transformed itself, the dialectical method, as well as everything else, legality and illegality, the state, even the compromise with the enemy, into a weapon of this battle."[14]

What Lenin learned from Clausewitz[15] was not only the famous formula that "war is the continuation of politics with other means" but more, that in the age of revolution the distinction of friend and enemy is fundamental to politics as well as war: "Revolutionary war is for Lenin the only true war because it derives from absolute enmity. All others are conventional."[16] The war of absolute enmity knows no limitations, legal or any other. The question is only: Is there an absolute enemy and who is he *in concreto*? Lenin's concrete and absolute enemy was the class enemy. For Schmitt, the secret of Lenin's enormous impact was his understanding of the enemy as a concrete force. Clausewitz could understand the real enemy, i.e., that which determines wars between states, but could not conceive of an enemy in Lenin's sense — an absolute enemy. One hundred years later Lenin, the professional revolutionary, destroyed all previous limitations of war, whereby it became absolute and the partisan became the bearer of absolute enmity against an absolute enemy.

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12. Carl Schmitt, *Theorie des Partisanen*, *op,cit.*, p. 17.

13. Carl Schmitt, *The Concept of the Political*, Edited and Introduced by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976), p. 74. Cf. Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum prolitarischen Klassenkampf* (1921), Fourth Edition (Berlin: Duncker & Humblot, 1978), pp. XIII-XVI.

14. Schmitt, *The Concept of the Political*, *op. cit.*, p. 63.

15. Here Schmitt employed the German translation of Lenin's notebooks on Clausewitz. Cf. *Theorie des Partisanen*, *op.cit.*, pp. 55ff.

16. *Ibid.*, p. 56.

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The development of the theory of the partisan from Clausewitz over Lenin to Mao was accomplished through the dialectic of regulars and irregulars, professional soldiers and professional revolutionaries. Formerly only a marginal figure — in the classical conduct of war — the partisan has become, if not a central, at least a pivotal figure in the conduct of global revolutionary war. Schmitt gives much space to his analysis of Raoul Salan, and the transition from Mao to Salan. His most telling reference (in terms of "Political Theology") is probably Che Guevara's statement: "The partisan is the Jesuit of war."[17] He deals with Ho Chi Minh and Indochina, Algeria and the whole new situation. But the key for Schmitt is the concrete conceptual transformation. In terms of his political nature as such, the partisan has a real but not an absolute enemy. In terms of his tellurian nature, this is also true. Only Lenin, the professional revolutionary of the global civil war, could transform the real into an absolute enemy. Even as Clausewitz could not conceive of the state as an instrument of a party, or of a party dictating to the state, Lenin's absolutization of the party and also of the partisan ideologically transformed the enemy into a foe and the partisan into a bearer of absolute enmity. While Schmitt also observes that the development of absolute means of annihilation has promoted absolute enmity, it is more the absolutization of values that has created the present situation.

"For the idiom of the modern world there is still a significant linguistic distinction in present-day English-American usage to be considered: the word *foe*, which after Shakespeare became antiquated and of only 'rhetorical' value, after WWII awakened to new life. In his contribution to my *Festschrift*, *Epirrhosis* (1968), George Schwab investigated this symptomatic development under the title 'Enemy oder Foe: Der Konflikt der modernen Politik'."[18] On more than one occasion in conversations with Schmitt during his last years he expressed his hope that Schwab would further develop the theme of this essay, owing to its significance for an understanding of the present situation. In this sense, Schwab's article remains a critical document.[19] Not incidental, however, is Schwab's divergence from Schmitt. As a jurist, Schmitt drew the logical conclusions from the development of militant ideology for the concept of the political, but he did not simultaneously revise his view of the subversion of the *jus publicum Europaeum*. Schwab, a historian, ascribes the undermining of the epoch of the European sovereign state precisely to the advent of militant ideology. He understands his thesis as a further elaboration of Schmitt's concept of the political, and in many ways it is. The role he ascribes to militant ideology is both more and less than that elaborated in *Theorie des Partisanen*: more in the sense of the *jus publicum Europaeum*; less in the sense of the "tyranny of values."

17. *Ibid.*, p. 92.

18. Carl Schmitt, *Politische Theologie II: Die Legende von der Erledigung jeder Politischen Theologie* (Berlin: Duncker & Humblot, 1970), p. 118.

19. Schwab has elaborated on this theme in "Ideology: Rhetoric or Reality?" in *Ideology and Foreign Policy: A Global Perspective*, Edited and with an Introduction by George Schwab (New York and London: Cyrco Press, 1978/Irvington Press, 1981), pp. 143-157.

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# *Enemy or Foe: A Conflict of Modern Politics**

George Schwab

In 1927 Schmitt provided a fundamental criterion of international relations in the epoch of the European sovereign state: the distinction between friend and enemy.[1] His criterion also held true in domestic relations when quarrels reached the point of civil war. He measured political relations by the ever-present possibility of conflict that may cause death.[2] By confining his discussion of politics to the European sovereign state — roughly the period from the 16th and 17th century to our own — Schmitt saw international relations between such states in time of peace as subject to certain accepted "rules of the game." This, in turn, had definite repercussions on the conduct of states in time of war. Since political relations in different eras assumed various forms among independent political entities in time of peace, and since such relations were not always bound by mutually accepted rules, the conduct of such states in time of war also reflected this fact. With the decline of the epoch of the European sovereign state, Schmitt's account needs to be reconsidered in light of the conceptual distinction between enemy and foe.

Although the enemy-foe distinction may appear to be purely linguistic, the distinction conceals a difference essential for a meaningful understanding of modern politics. Some languages are more fortunate than others in offering two distinct terms to designate an adversary. The English words *enemy* and *foe* have their linguistic counterparts in Latin, Greek, and Hebrew, and the distinction has definite political implications. For example, the Hebrew Bible refers consistently to the private adversary as *soneh* and the public adversary as *ojeb*. The Greeks similarly distinguished between *echtrós* and *polémios*; the Romans, between *inimicus* and *hostis*. Common English parlance, however, often and mistakenly uses the terms enemy and foe synonymously.

Whether international politics in time of peace is based on seeing the other

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* [Ed.] This essay has been specially edited for this issue. It originally appeared in German in *Epirrhosis: Festgabe für Carl Schmitt*, ed. by Hans Barion et al. (Berlin: Duncker & Humblot, 1968), vol. II, pp. 665-682. A Japanese translation appeared in 1980. The enemy/foe thesis has also been discussed by Ion X. Contiades in "Echtrós und Polémios in der modernen politischen Theorie und der griechischen Antike," *Griechische Humanistische Gesellschaft*, Zweite Reihe (Athens, 1969). pp. 5ff. See also Christian Meier, *Die Entstehung des Politischen bei den Griechen* (Frankfurt a/M, 1983), pp. 152-53, 208-209.

1. Cf. Carl Schmitt, *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien* (Berlin: Duncker & Humblot, 1963, 1979). See also my translation based on the 1963 edition: *The Concept of the Political* (New Brunswick, N.J.: Rutgers University Press, 1976). For a detailed discussion of Schmitt's friend/enemy thesis, see Julien Freund, *L'essence du politique* (Paris: Librairie du Recueil Sirey,1965), pp. 448 ff.

2. Schmitt, *Der Begriff des Politischen*, *op. cit.*, pp. 28ff.

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as "enemy" or "foe" usually becomes clear during hostilities. The distinction can be best understood by ascertaining whether certain accepted rules governing warfare are followed by combatants. Excesses in war are often not the consequence of ordinary propaganda campaigns but of profound religious or ideological convictions held prior to the outbreak of hostilities.

Since the major pillars of Western culture are grounded in the Hebrew Bible, Greek and Roman thought and practice, it is useful to examine the ancient Israelites' concept of politics. In the Hebrew Bible politics is based on religion. The command to love one's neighbor is understood in light of the distinction between *soneh* and *ojeb* (Leviticus 19:18). A "neighbor" meant a fellow Israelite; if private antagonisms among neighbors resulted in damages, or if the Israelites committed detrimental acts against all of Israel, punishment was meted out according to their laws. But matters were different in relations between the Israelites and "others." In Deuteronomy the "others" are usually those people who stand in the way of God's chosen people in their journey to the Holy Land.[3] In view of the fact that the Israelites considered themselves the chosen people, they did not accept the "others" as equals, and this distinction became obvious during the holy wars they waged with God's blessing and his direct intervention.[4] Believing they fought for just causes, the Israelites did not find it necessary to draw distinctions between combatants and noncombatants, or between combat and noncombat areas. During periods of hostilities, foes were indiscriminately put to death and property that had not been damaged was either destroyed or confiscated.[5]

A changed pattern of politics gradually emerged in classical Greece and Rome. Noticeable was the absence in peacetime of major religious considerations in the conduct of international relations. Within this relatively secular atmosphere, it became possible to normalize international political intercourse among independent political entities. This development is obvious in the various kinds of treaties that were signed.[6]

The normalization of political relations was followed by the acceptance of procedures regarding ways in which hostilities were to be started. Herodotus

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3. The Hebrew Bible contains a number of intermediary distinctions that have definite legal implications, such as that between the clan and the foreigner — the protected sojourner, or the resident stranger. See Benjamin N. Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood* (Princeton: Princeton University Press, 1949), pp. xvff. But these intermediary designations do not obviate the fundamental distinction.

4. For a general survey of the holy wars in the Hebrew Bible, see D. Gerhard von Rad, *Der heilige Krieg im Alten Testament* (Zurich: Zwingli-Verlag, 1951), pp. 6ff.

5. Regarding war practices, Deuteronomy 20 states that cities located beyond the borders of Israel which submitted to the Israelites were to be incorporated as tributaries. If such cities refused to surrender, only males were to be put to death. All inhabitants of cities within the confines of Israel were to be killed; the fruit trees were to be spared and used by the victors.

6. For examples, see Henry Bengston, *Die Verträge der griechisch-römischen Welt von 700 bis 338 v. Chr.* (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1962).

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observed that, prior to embarking on a war against a properly-organized political entity, the Greeks usually made a public declaration of war.[7] In reflecting on Rome's practices, Cicero noted that just wars could only be waged against civilized entities, not against persons living together in an irregular and precarious association.[8] For the Romans to embark on a *justum bellum* meant that certain formalities, particularly the act of declaring war, had to precede the actual outbreak of hostilities.[9] Thus both Greeks and Romans drew a distinction between a state of peace and a state of war — *inter pacem et bellum nihil est medium.*

Despite these developments, no profound change occurred in the meaning of *polémios* and *hostis* insofar as actual war practices were concerned. Although temporary truces were arranged at times for the purpose of attending to wounded soldiers and removing the dead, war practices in general remained cruel. Neither the Greeks nor the Romans were much concerned with sparing noncombatants during hostilities or (except for temples, graves, and other sacred objects) drawing distinctions between combat and noncombat areas. Phillipson explains this by the fact that all persons on the opposing side, often including their allies, were considered foes.[10] The reasons were many: the refusal to accept "others" as racial equals, as in the Persian and Punic wars; the ideological differences that became apparent during the Peloponnesian conflicts, etc. Apparently the most important Greek and Roman concern was the treatment of the vanquished. The claims of the victors in Greece depended largely on their generosity. But the Romans at times accorded prisoners of war and civilians humane treatment, as a rule in instances of voluntary surrender and not when the foe was defeated by assault.[11]

Christians during the Middle Ages also drew a sharp distinction between the private and the public adversary. The command to love one's enemy (Matt. 5:44; Luke 6:27) reads in Latin *diligite inimicos vestros*, not *diligite hostes vestros*. The *inimicus* is the private adversary; there is no mention of the public foe, the *hostis*. Because it was the Church which usually decided the public adversary through most of the Middle Ages,[12] the Church's attitude toward war is relevant here.

From Christianity's inception until the end of the Middle Ages, three distinct positions can be discerned. At first, killings of any kind were considered incompatible with the Christian ideal of love. This pacifist stage ended at the time of

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7. Herodotus, *History* VII, 9, 2.
8. Cicero, *De Republica* i, 25; see also *Digest* XLIX, 15, 7.
9. Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*, (London: MacMillan and Co., 1911), II, pp. 179-180.
10. *Ibid.*, p. 196. Phillipson unfortunately uses the words *echtros*, *polémios* and *hostis* synonymously (p. 166).
11. *Ibid.*, pp. 234ff.
12. The whole question of private warfare cannot be dealt with here. However, some characteristics of these wars survived and were subsequently incorporated into wars waged among European sovereign states. See Maurice Hugh Keen, *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul, 1965), pp. 241ff.

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Constantine, when Christianity and Rome were closely linked. Among others, St. Ambrose and St. Augustine formulated the Christian concept of the *justum bellum*. The former considered the defense of the Empire linked with the protection of the faith against the Arians. St. Augustine defined just wars as those which avenge injuries; to him, as well as St. Ambrose, the cause of Rome was just because it was Christian. He ruled out violence for its own sake.[13] But the Church's attitude toward war changed when it grew in influence. This coincided with the crusades, which were reminiscent of the holy wars waged by the Israelites. The difference was that the crusades were "not fought so much with God's help as on God's behalf, not for a human goal which God might bless but for a divine cause which God might command."[14] The fact that the public adversary was damned in advance meant in effect that he was possessed by the devil and no quarter should be given him. The religious fanaticism that anteceded crusades against infidels implied that they were not considered by the Church as equals; in a sense, war with them was perpetual. True to their beliefs, the crusaders generally drew no distinctions between combatants and noncombatants or between combat and noncombat areas. The fate of the vanquished was usually death; as a rule, to the victors belonged the spoils.

The spirit of the crusades came again to the fore in the internecine religious wars of the 16th and 17th centuries. With the exception of the Anabaptists, and subsequently also the Quakers, the various Protestant state churches opposed Catholicism actively and often violently. Religious conflicts were particularly savage in France, where Calvinism spread rapidly. Catholics refused to legalize this heresy; the Calvinists fight for survival had no place for humane considerations — it was a holy cause.[15]

The gradual fading of the concept of the foe in European politics coincided with the decline of the European medieval order. The factors responsible for this decline and the emergence of a new order — the European sovereign state — can be traced to the effects of the crusades: the reopening of the Mediterranean, which resulted in the revival of trade; the growth of towns; the emergence of a new class; and dissension within the Church, which led eventually to the religious split engulfing parts of Europe in bloody conflicts. In the midst of these developments, and largely owing to the religious struggles, the power of monarchs was strengthened. They finally dared to defy popes, churchmen, and rebellious nobles. As monarchs solidified their power, they sought legal justification for their claims to authority. Powerful thinkers justifying the monarchs' actions were not lacking.

During the religious wars, monarchs slowly gained the upper hand and

13. Roland H. Bainton, *Christian Attitudes Toward War and Peace: A Historical Survey and Critical Re-evaluation* (New York: Abingdor Press, 1960), pp. 77, 85ff.; also Ernest Nys, *Les origines du droit international* (Paris: Thorin & Fils, 1894), pp. 44-46.

14. Bainton, *Christian Attitudes toward War and Peace*, *op. cit.*, pp. 45-46.

15. *Ibid.*, p. 145; see also Franklin C. Palm, *Calvinism and the Religious Wars* (New York: Henry Holt & Co., 1932), p. 42.

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eventually succeeded in terminating such wars in their respective domains, thus assuring order, peace and stability. For the first time in Christian Europe, persons with different Christian beliefs were able to coexist without fear of physical harm. With the medieval order fading, the center of politics shifted from questions of faith to secular political relations among sovereign states. The competence of popes to decide questions regarding armed conflict lost its relevance, because such decisions became the exclusive concern of temporal sovereigns. Specifically, the medieval conception of *justum bellum* was stripped of religious overtones and formalized into that of the just enemy; the *justa causa* of the medieval period, with its connotations of Christian morality, was gradually subordinated to the exclusive judgment of the sovereign.[16]

The termination of religious conflicts in which human beings fought each other as if in a violent state of nature — *bellum omnium contra omnes* — had two repercussions, both of which enabled international relations to be normalized on the basis of equality: religious coexistence became eventually a fact of domestic life and rulers recognized each other as equals. Once the principle of equality was accepted, a body of rules governing peace and war gradually began to take shape.

According to these rules, a state of war can commence only at the moment specified in a declaration of war; in the event that the time is unspecified, immediately upon the communication of such a declaration; or at the initiation of an act of force by one side regarded by the other as constituting the creation of a state of war.[17] Linked with the distinction between peace and war was the subsequent recognition of neutrality as a legal status of third parties.[18] The idea that the cessation of hostilities must eventually be followed by the termination of war in the form of a peace treaty gained acceptance.[19]

With the turn against total war that emerged during the Enlightenment, and the acceptance of potential European adversaries as equals, effective and acceptable rules governing war were codified in a series of conventions: (1) A distinction was drawn between combatants and noncombatants, as well as between combat and noncombat areas. During a state of war, caution had to be exercised not to harm unarmed civilians, and attacks against undefended towns, villages, dwellings, and buildings had to be curbed as far as possible. Properly identified religious, medical, art, science, and charity institutions

16. Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum,* Second Edition (Berlin: Duncker & Humblot, 1974), pp. 112-115.

17. Arnold D. McNair, "The Legal Meaning of War, and the Relations of War to Reprisals," *Problems of Peace and War*, Transactions of the Grotius Society (London: Sweet and Maxwell Limited, 1926), Vol. II, p. 45.

18. Philip Jessup and Francis Deak, *Neutrality: Its History, Economics and Law* (New York: Columbia University Press, 1935), Vol. I, p.4; also James L. Briely, *The Outlook for International Law* (Oxford: The Clarendon Press, 1945), pp. 25ff.

19. For a discussion of the problems surrounding the question of when material and formal wars end, see Lothar Kotzsch, *The Concept of War in Contemporary History and International Law* (Geneva: Librarie E. Droz, 1956), pp. 239-240, 250ff.

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could not be attacked at all. (2) The obligation to give quarter, which implied that killing or wounding a properly-identified enemy soldier who had laid down his arms was unlawful, and that prisoners of war had to be treated humanely and, if necessary, accorded proper medical attention. (3) Because the legitimate object of war was to weaken the enemy's military forces, certain kinds of destructive weapons that produced excessive suffering, such as poison and poisoned weapons, were prohibited.[20] By virtue of the fact that the public adversary was no longer considered a devil or an adversary fit for annihilation,[21] war practices became circumscribed. As a result of this transformation of the public *foe* into the public *enemy*, wars, diabolical as it may sound, became, so to speak, clean.[22] The apparent shift in political relations — from seeing the other as an "enemy" rather than a "foe" — also appears to have had definite linguistic repercussions. It is probably no accident that the term *foe* in English gradually became rhetorical and was supplanted by the term *enemy*. With the decline of the epoch of the European sovereign state, the conceptual meaning of the *enemy* has begun to fade. With the return of the *foe*, it may well become rhetorical.[23]

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20. Valuable for a brief historical survey and details of laws governing war practices in the epoch of the European sovereign state is Friedrich J. Berber's *Lehrbuch des Völkerrechts* (Munich and Berlin: C. H. Beck'sche Verlagsbuchhandlung, 1962), Vol. II (*Kriegsrecht*), pp. 140ff. For difficulties in actual combat, see Lester Nurick, "The Distinction between Combatants and Noncombatants in the Law of War," *The American Journal of International Law*, No. 4 (1945), pp. 680ff.

21. In this context, see also the discussion of the modern concept of continental penal law by Otto Brunner, *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*, Fourth Revised Edition (Vienna: Rudolf M. Rohrer Verlag, 1959), p. 36. According to Brunner, by the 18th century the idea that a *Rechtsbrecher* was no longer designated as a foe and thereby expelled from the *Rechtsgemeinschaft* had become well-entrenched: "Here the thought was also established that only the opposing soldier constitutes an enemy in the international law sense."

22. On "civilized warfare," see Frederick J. P. Veale, *Advance to Barbarism: How the Reversion to Barbarism in Warfare Menaces our Future* (Appleton, Wisc.: C.C. Nelson Publishing Company, 1953), Chapters IV and V.

23. In early usage, the *foe* was "an adversary in deadly feud or mortal combat": *The Oxford English Dictionary* (Oxford: The Clarendon Press, 1933) IV, pp. 378-379. From some of the examples cited, the *foe* was unmistakably equated with the devil, whereas the *enemy* was defined in milder terms: "one that cherishes hatred, that wishes or seeks to do ill to another" (*ibid.*, p. 166). The center of gravity is either on the private or the public enemy. Specifically stated is that the *foe* is "now somewhat rhetorical" (*ibid.* p. 378-379). Interesting in this context are Halleck's remarks. He reminds the reader of the distinction the Romans drew between *hostis* and *inimicus*. Although he does not use the term *foe*, he draws the distinction between "legal hostility" and "personal enmity" and between "private" and "public" enemies. His use of the term *enemy* coincides with that of the dictionary; his references to public enemies accord with the conceptual meaning inherent in it: "Private enemies have hatred and rancor in their hearts and seek to do each other personal injury. Not so with public enemies. They do not, as individuals, seek to do each other personal harm. And even when brought into actual conflict, as armed belligerents, there is usually no personal enmity between the individuals of the contending forces." Henry Wager Halleck, *International Law or Rules Regulating the Intercourse of States in Peace and War* (New York: D. Van Nostrand, 1861), pp. 411-412. See also Albrecht

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The beginning of the decline of the European sovereign state can be traced to the French Revolution, but especially to the second half of the 19th century. This can be attributed to the emergence of the Anglo-Saxon concept of war as opposed to the continental concept centered on the scope and meaning of the "enemy,"[24] or to the inclusion of non-European peoples in the relatively homogeneous European order. Technological development of certain kinds of weapons also made it difficult to adhere to the legal distinctions governing war during the epoch of the European sovereign state. Then there was the impact of two world wars on Europe's decline. However, important as these and other factors were in undermining this epoch, none was more potent than the appearance of new militant ideologies such as Communism and Nazism.

Communist political theory challenged the entire existing political order, and with it the sovereign state. Marx and Engels concluded that the sovereign state is nothing but the embodiment of the organized will of the bourgeoisie, meant to ruthlessly exploit the proletariat.[25] In view of the antithetical nature of the two classes, a proletarian revolution is not only inevitable but also justifiable in hastening the overthrow of the bourgeois order. In this respect, communist political theory has important implications for the enemy-foe distinction. By condemning the bourgeoisie for exploiting the proletariat, Marxist-Leninists injected a criminal element into the relations between these two classes and reduced domestic political relations to the friend/foe dichotomy. The foe is the new devil, who must be eliminated; all crimes can be condoned as historically necessary in the struggle against the bourgeoisie. This goal can be achieved either by following legal bourgeois electoral methods or by outright force.[26] As in domestic politics, so also in international relations, the *pacta sunt servanda* principle can be respected by equals only; it is rejected when one system considers the other essentially criminal. According to Marxist-Leninist doctrine, bourgeois modes of behavior in international politics

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Mendelssohn-Bartholdy, *Der Kriegsbegriff des englischen Rechts: Erläuterungen zum Fall Panariellos* (Mannheim: J. Bensheimer, 1915), pp. 26, 31, 33, 37, 39, 47, 54, 61 and 69ff.

24. Kotzsch, *The Concept of War in Contemporary History*, *op cit.*, pp. 48-49; also, Mendelssohn-Bartholdy, *Der Kriegsbegriff des englischen Rechts*, *op.cit*, pp. 6ff.

25. Karl Marx and Frederick Engels, "The Communist Manifesto," *Kapital and Other Writings of Karl Marx*, Edited and with an Introduction by Max Eastman (New York: Modern Library, 1932), pp. 323, 343.

26. In Engels' 1895 Introduction to Marx' "The Class Struggles in France 1848-1850," he wrote: "The irony of world history turns everything upside down. We, the 'revolutionists,' the 'overthrowers' — we are thriving far better on legal methods than on illegal methods. The parties of Order, as they call themselves, are perishing under the legal conditions created by themselves . . . . They cry despairingly with Odion Barrot: *la légalité nous tue*, legality is the death of us; whereas we, under this legality, get firm muscles and rosy cheeks and look like life eternal," Karl Marx and Frederick Engels, *Selected Works in Two Volumes* (Moscow: Foreign Languages Publishing House, 1958), Vol. I, p. 136. Lenin observed that "revolutionaries who are unable to combine illegal forms of struggle with *every* form of legal struggle are poor revolutionaries indeed," *"Left-Wing" Communism, An Infantile Disorder* (New York: International Publishers, 1940), p. 72.

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must be adhered to only for as long as they are tactically advantageous.[27]

The sharp distinction between a state of peace and a state of war can no longer be drawn in a world divided by two dominant antithetical systems. It is in this context that an intermediary situation has developed, that of a *status mixtus*.[28] In this vein, Carl Schmitt pointed to the crucial setback to the European accomplishment of subjecting wars to rules that communist theory represents, since it is based on the assumption that the class enemy is an absolute enemy, and because such enmity does not recognize any limits to the struggle.[29] In pursuing a total war against the Soviet Union, Hitler sought both to acquire *Lebensraum* and to prevent the onrush of communism. Furthermore, in pursuing his racial policies, he condoned the enslavement and eventual extirpation of the Slavs.[30] Thus the Nazis injected into politics their own concept of the foe, based on Hitler's notion of racial superiority.[31]

Communism and Nazism notwithstanding, political relations today should not be seen solely in terms of the foe. At present two epochs overlap — the remnants of the epoch of the European sovereign state and the as yet undetermined new epoch. But the latter is rapidly displacing the former: political relations are reverting to those reminiscent of the confessional civil wars. European sovereign states succeeded in humanizing war — subjecting it to certain "rules of the game" by neutralizing religion, and by accepting and treating each other as equals. The introduction of a new kind of theology — militant ideology — is subverting this achievement. But there are other ideologies at work, less militant but perhaps no less dangerous. US foreign policy is based on a complex of moral values that Americans believe to be universally valid. In presuming the fight for the "just cause,"[32] the US may thus cease to regard its opponents as "enemies" and treat them as "foes." Whatever the outcome, the conflict of politics will remain: enemy or foe.

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27. Günther Lummert, *Marxismus-Leninismus und Völkerrecht* (Cologne: Markus Verlag, 1959), pp. 53-56; see also Kotsch, *The Concept of War in Contemporary History, op cit.*, pp. 65ff.

28. Kotzsch, *The Concept of War in Contemporary History*, *op.cit.*, pp. 241-243.

29. Carl Schmitt, *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen* (Berlin: Duncker & Humblot, 1963), p. 56. Unfortunately, the German language possesses only one term to designate an enemy or foe (*Feind*). Schmitt considered this distinction critical. See *Der Begriff des Politischen*, *op. cit.*, pp.17-19.

30. Walter Anger, *Das dritte Reich in Dokumenten* (Frankfurt a/M: Europaische Verlagsanstalt, 1957), pp. 61-62, 193.

31. For not giving quarter to the "racially inferior" Slavs, the German army was exonerated in advance by Hitler, and it is in this light that we must understand Hitler's statement concerning war against Russia: "This struggle is a struggle of ideologies and racial differences, and will have to be conducted with unprecedented, unmerciful, and unrelenting harshness. All officers will have to rid themselves of obsolete ideologies." See Halder's affidavit at Nuremberg, November 22, 1945, *Nazi Conspiracy and Aggression* (Washington: United States Government Printing Office, 1946), Vol. VIII, pp.645-646.

32. On the American "mission" in the world, see Hans J. Morgenthau, *The Purpose of American Politics* (New York: Random House-Vintage Books, 1960), pp. 99ff. and Chap. III.

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# *The* Nouvelle Ecole *of Carl Schmitt*

Paul Gottfried

The latest issue of *Nouvelle Ecole* (No. 44, Spring 1987), Europe's most spirited and unpredictable journal of rightist opnion, features a special section on Carl Schmitt. The cover is dominated by a caricature of the nonagenarian brooding over the fate of the world, which he holds in his hands.[1]

The three articles included in this special issue were obviously chosen for their more general orientation. The first, by Julien Freund, introduces the central theme: "Les lignes de force de la pénsee politique de Carl Schmitt"; the second, by Günter Maschke, is primarily a biographical-bibliographical essay which also discusses recent works about Schmitt; the third, by Armin Mohler, "Schmittistes de droit, Schmittistes de gauche et . . . Schmittistes etablis," is a report on the first international Schmitt symposium.[2] Also included is a bibliography of Schmitt's works by the editor, Alain de Benoist, and Maschke, plus a goodly number of photographs and caricatures of this modern-day Hobbes (including one of Hobbes himself).

Unlike Schmitt's unforgiving critics, many of whom, at the time of his death, published portrayals of him as an unrecontructed Nazi ideologue in such journals as *Encounter*, *Die Zeit*, *Corriere della Sera* and *Il Giornale*, the contributors to *Nouvelle Ecole* are much more concerned with Schmitt's *oeuvre* than his problematic biography. Unfortunately, owing to the egregious nature of Schmitt's compromises during the Third Reich, this approach ends up looking like an apology to Schmitt's critics. Freund, whose interest in Schmitt began with his dissertation, *L'essence du politique* (1965), does not dodge the issue but gives it short shrift in his discussion of Schmitt's ideas. Maschke, on the other hand, titles his article, "Carl Schmitt: 'Fossoyeur de la république,' 'Kronjurist' ou 'dernier classique'?", and deals directly with the case against Schmitt as Hitler's "Crown Jurist." At least some of the defenses he offers appear eminently sound: Schmitt's own charge in the early 1930s that the Weimar Republic was too indecisive to crush the Nazis; the brevity of Schmitt's involvement with the Nazi regime (which in many ways paralleled

1. Plans for this special issue were made more than a year in advance and its format was changed owing to the great number of manuscripts received from scholars of various political persuasions in Europe, the US and Japan. Ultimately, the decision was made to publish most of these as a book, scheduled to appear later this year.

2. This symposium was held at the Hochschule für Verwaltungswissenschaft in Speyer in October 1986. The proceedings are scheduled to appear next year under the title *Carl Schmitts Stellung in den Rechts- und Geisteswissenschaft des 20. Jahrhunderts* (Berlin: Duncker & Humblot).



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that of Heidegger); and the distinction between Schmitt's authoritarian concept of the state and the Nazis' anti-political globalism. But Maschke goes too far in both castigating anti-Schmittians and in attempting to exonerate Schmitt from the charges made against him.

Responding to the "anti-nécrologie" of Dolf Sternberger, who dared to comment on Schmitt's "errors," Maschke mocks the "sterile approach" of criticizing a "great thinker": "After reading Marx' and Engels' *Manifesto* for a couple of hours, any intelligent student of 17 is capable of pointing out its errors. But is he capable of grasping its importance and genius?" Unfortunately, a great thinker's errors can and do have graver consequences than those of a lesser order. Sternberger or anyone else has a duty to call attention to these errors, even as Maschke has a right to prove that they are not what they are alleged to be. But alleged theoretical errors are one thing, actual behavior is quite another. Though Schmitt's ties to the Nazis have been exaggerated, first by his former admirer and the later West German president, Theodor Heuss, then by the American assistant prosecutor at Nuremberg, Robert Kempner, Maschke is wrong to deny the obvious. For example, the article Schmitt published on August 1, 1934 calling on Hitler to uphold the legal order in the wake of the "Night of the Long Knives" was full of extravagant praise for Hitler. What one can say in Schmitt's defense is not that he was "naive" (which his American biographer, Bendersky, suggests) or that he hoped Hitler would stave off the collapse of the German state (as both Maschke and Freund contend). A more plausible explanation than ascribing invincible ignorance of reality to a realistic political thinker is that, in the summer of 1934, Schmitt was protecting his own skin. As one with close connections with victims of Hitler's purge, particularly Kurt von Schleicher, and as one who had advocated the suppression of the Nazi Party during the Weimar Republic, Schmitt was understandably afraid of Hitler and thus eager to propitiate him.

Despite these reservations, there is much insight in these essays both individually and collectively. From Freund's attempt to fit Schmitt into the history of Western political thought to Maschke's and Benoist's bibliographical essay, the contributors present what is original in Schmitt's thought and relate it to major 20th century political debates. A curmudgeonly criticism might be that none of the essays contains much new material. But what distinguishes the series is its comprehensiveness. The contours of Schmitt's life and the development of his thought, accounts of "authorized" and "unauthorized" visits to his home in Plettenberg, discussions of Italian socialists and new rightists meeting to consider the Schmittian legacy in Florence in November 1982, and the October 1986 international conference of Schmitt scholars at Speyer are all treated in this remarkable section.

Two aspects of the Schmitt discussion in *Nouvelle Ecole* interested me particularly: one of a strictly scholarly nature, the other with deeper implications.

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Freund points out that much of Schmitt's critique of the bourgeois liberal state was already implicit in Hobbes' attack on the Jesuit, Robert Bellarmine. As a student of Catholic political thought, Schmitt had read Bellarmine and, I assume, *De potestate summa pontificis in rebus temporabilus* (Rome, 1610) with particular thoroughness. In response to James I's demand that English Catholics swear allegiance to the king, Bellarmine proposed a theory of the state based on "indirect powers": No single locus of authority, only a cluster of moral and spiritual influences (most particularly papal command) would give direction to the state. Schmitt saw in such special pleading the earliest justification for the "proliferation of interests" that had conquered the modern state. In conversations with Freund he lamented that Bellarmine's "indirect powers" were now "undermining" the state and even society. What had carried the day was thus not Hobbes' concept of undivided sovereignty, but a neo-medieval multitude of special interests.

Perhaps the most significant conclusion to be derived from this special issue of *Nouvelle Ecole* is Schmitt's popularity among continental European leftists and rightists, which contrasts with his thus-far unpromising American reception (though some American scholars have tried to popularize Schmitt's major writings). Why do such socialist Italian writers as Norberto Bobbio (in the communist journal *Rinascita*) praise Schmitt's insight, while the tirelessly anti-communist *Encounter* condemns him as a Nazi? The answer may be that Schmitt is taken seriously in circles willing to address hard political questions. In America neither neo-conservatives nor Kennedy-style Democrats are prepared to abandon the *débat encadré* in which both groups happily participate. Neither side thinks beyond the present model of welfare-state democracy, nor of advocating shifts in the balance between managerial state control and managerial capitalism. One searches in vain for hints of the perception common to Schmitt and his disciples that the present political and social order is historically conditioned and already preparing the way for alternative forms of existence. With its plebiscitary rituals, the modern managerial state is not the same as the liberal bourgeois state of the 19th century. From Schmitt's generally sound point of view, the state is already being conquered by bureaucratic and corporate interests which exercise power behind the "veils" of world democracy and social justice.

Some Europeans see beyond this *débat encadré*. Whether they call themselves leftists or rightists, they follow Schmitt in finding the quest for power and the disintegration of the liberal state of greater significance than the rhetoric of competing interests. Thus far the English-speaking world has remained closed to the discussion of power that *Nouvelle Ecole* evidences as taking place among Schmittians everywhere in Western Europe. The politics of compassion, global democracy and self-actualization (with or without tax breaks) are more to the fore in societies that take the current welfare state as the culmination of human history.

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*REVIEWS:*

Carl Schmitt, *Political Theology*, translated by George Schwab, (Cambridge, MA.: MIT Press, 1985).
Carl Schmitt, *The Crisis of Parliamentary Democracy*, translated by Ellen Kennedy (Cambridge, MA: MIT Press, 1985).

If Schmitt had died in 1930, he would be read today as a major conservative thinker of the Weimar Republic. As it turned out, he paid for his survival under the Nazi regime with the coin of collaboration and thereby destroyed his reputation for decades. Nevertheless, the intellectual rehabilitation of Schmitt has begun. The first English translation of one of Schmitt's most important works, *The Concept of the Political*, appeared in 1976.[1] Now we have two more translations which together provide English readers with the opportunity to assess Schmitt as a political theorist.

Schmitt has been called the "Hobbes of the 20th Century." He shares Hobbes' pessimistic view of human nature and his conclusion that a sovereign must have broad powers to assure peace. For Hobbes, what is decisive is not truth but authority. Schmitt agreed that order is the fundamental political value and made the distinction between friend and enemy the criterion of politics.[2] In contrast to Hobbes, however, Schmitt distinguishes two kinds of order: normal order and the state of exception.[3] *The Crisis of Parliamentary Democracy* analyzes the disintegration of the political order of Western liberal democracies. *Political Theology* wrestles with the problem of finding a new order.

For Schmitt, the essence of parliament is public debate. The correct will of the state emerges from a rational process of exchanging opposing opinions. Discussion means an exchange of opinion seeking to persuade one's opponent through argument, or allowing oneself to be persuaded of something as true or just. Parliament provides the forum where reason attains public power, and law represents the outcome of a conflict of opinion rather than a struggle of interests. The conclusion is that this ideal depends on several assumptions: all participants must have shared convictions that serve as premises, must be willing to be persuaded, should be independent of party

1. Carl Schmitt, *The Concept of the Political*, translation, introduction and notes by George Schwab (New Brunswick, N.J.: Rutgers University Press, 1976).

2. Given the importance of order to Schmitt, Leo Strauss' argument that Schmitt identified politics with Hobbes' state of nature is mistaken. See Strauss, "Comments on Carl Schmitt's "Der Begriff des Politischen," in Carl Schmitt, *The Concept of the Political*, *op. cit.*, p. 88. Schmitt later proposed "concrete orders" as alternatives to both decisionism and normativism. See George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970), pp. 115ff.

3. Schmitt insists that the state of exception is an order, not a state of anarchy. See *Political Theology*, p. 12.

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and free from selfish interests.[4]

This rigorous rationalism meant that parliamentary liberalism depended on the publicity of opinion. Medieval and early modern political thought contained strong traces of Machiavellianism, understood as techniques of gaining and expanding power. Success depended on certain technical secrets. For the defenders of parliament, however, publicity in political life appeared as the solution to the decadence and corruption resulting from secrecy. Enlightenment thinkers first argued that the light of publicity would liberate mankind from superstition and fanaticism. Such was their faith in publicity that they endorsed an expansion of the power of the enlightened despot, since any abuses presumably would be limited by enlightened citizens. Similarly, 19th century liberals argued that freedom of speech and of the press assured freedom from tyranny. Schmitt notes that publicity of opinion implied freedom of opinion as liberals understood it, i.e., as the freedom of the private individual. The secret ballot emerged to protect private opinion from public power. This private freedom accorded well with the metaphysical aspects of liberalism.

Schmitt argues that the rationalism of liberal economies and parliamentary politics both assume a horizon beyond reason. If Adam Smith believed that the market produces wealth most efficiently by honoring the freedom of contract and trade, John Stuart Mill equally asserted that truth would emerge from the free competition of ideas. Both depended on a faith in free competition and the necessity of social harmony. This same metaphysical impulse led to the balance of power theory, which appealed to the liberal prejudice that openess and competition would produce laws that attained generality.[5] But the metaphysical grounding of these assumptions remained unexplored.

Schmitt believed that all seminal concepts of the modern state are secularized theological concepts. In *Political Theology* he argues that the modern

4. Schmitt quotes with approval Donoso Cortés' definition of the bourgeoisie as a "discussing class" which always tries to avoid a decision. Condorcet held an ideal of political life in which the whole population became a huge club; truth could be reached through agreement. If this freedom existed, a decision could be avoided and not be needed. The opposite to discussion is the dictator who makes a decision. Cortés grudgingly respected the socialists for at least avoiding the liberal lack of responsibility (*Polititical Theology*, pp. 62-63). Habermas' account of the emergence of a "critical zone" of public reason in the early modern period is similar. See Habermas, *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (Neuwied and Berlin: Luchterhand Verlag, 1962), p. 39.

5. Schmitt argues that the theory of the balance of power in 19th century German liberalism developed into a teaching of organic mediation within the state. Thus Hegel saw the public nature of the estates serving as a mediation between the government and the people, which implied that parliament had become a way of educating people to their true interests. Other theorists viewed public opinion as an expression of all the aspects of the organic life of a people. Schmitt concludes that the organic and mechanical theories of public opinion were thus bound together. His analysis stands in marked contrast to most of the sociology of the day, which emphasized the distinction between the mechanical and organic theory.

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constitutional state came into being along with deism, with a theology that banished miracles from the world. Just as God could not contravene the laws of nature, the monarch could not intervene in a valid legal order. With the growth of scientific thought, men identified the validity of law with the lawfulness of nature. The idea of sovereignty became less important, since the machine of the universe needed no creator and could run itself. Liberals assumed that the orderliness of nature carried over to provide a latent order for politics.

*The Crisis of Parliamentary Democracy* continues the argument. A return to secrecy and the domination of interests over discussion indicated the decay of the order provided by liberal parliamentarism. Important decisions were no longer the result of a balancing of opinions or even parliamentary debates, because a legislature, working through ever smaller committees, loses its public character and becomes a facade. Decisions then emerge from a conflict of interests, rather than from public debate and argument. Since intellectuals first defended the public attack on the secret politics of monarchy, the return to non-public decisions necessarily undermines the basis of modern politics. Of course, as pluralists argue, compromises of interests can produce a workable legislature, but only at the cost of slowly depriving parliament of its legitimacy. For Schmitt, contemporary parliamentarism has become an empty formality.

The cogency of this analysis cannot be denied. Indeed, Schmitt's arguments indicate how far we have come from the original ideal of liberalism. Students of Congress, for example, now accept the committee system in the legislature without a sense of historical loss. At the same time, Schmitt's account of these difficulties lacks an analysis of why secrecy and interests have come to dominate liberal politics. For example, liberalism intellectually has always presented a Janus-face; along with the commitment to discourse and reason has come a defense of property and bodily need. The dominance of interest over discussion thus appears as an internal difficulty within the liberal system of ideas. Since an internal critique of liberalism could hardly appeal to him, Schmitt's analysis of the decay of the liberal ideal focuses instead on its relation to two alien ideas: democracy and dictatorship. In Schmitt's view, the misbegotten alliance of liberalism and democracy contributed in large measure to the decline of parliament. He defines democracy as a series of identities: of the ruler and the ruled, of the subject and object of state authority, of the people and their representatives in parliament, of the state and law, and, finally, of quantity (the majority of votes) and quality (the correctness of a law). For the democrat, all collective decisions are valid only for those who make the decisions. Critics of democracy can then object that a minority which loses the vote also loses its autonomy. To meet this difficulty, democrats are forced to assume an identity of the will of the minority with the will of the majority, even as Rousseau identifies the general will with the will of free citizens and argues that voters in the minority should conclude that they were in error about the general will.

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So far, Schmitt has done little more than voice traditional conservative fears about democracy. It is his modification of the definition of democracy which allows him to break new ground. He argues that democracy is characterized by the *recognition* of identities rather than a *real* identity, that a distance always exists between real identity and the result of identification. Logically, the will of the people is always identical to the will of the people, whether it be embodied in the votes of a million individuals or the will of one man. Democracy always confronts the paradox that the will of a minority can represent the true will of the people, while the people as a whole are deceived. At the beginning of modern democracy Schmitt finds radical democrats (e.g., the Levellers) who believed their radicalism made them the true representatives of the will of the people — a belief which in turn produced an undemocratic, exclusive aristocracy from democratic intentions.

A second paradox of democracy is that, procedurally, it allows for a majority to act undemocratically. In the U.S., for example, majorities supported *de jure* racial segregation. In this situation, the democrat is forced to advocate the education of the people, who will then correctly recognize and express their own political will. But, says Schmitt, this faith in education leads democracy away from liberalism. Political realism suggests that educating the people means only that the educator identifies his will with that of the people. The need for enlightenment thus leads inevitably to a self-interested educational dictator, who suspends democracy in the process of creating "true" democracy. Theoretically, dictatorship is not the opposite of democracy but rather a legitimate conclusion from democratic premises.

Schmitt devotes an entire section of *The Crisis of Parliamentary Democracy* to rational and irrational conceptions of dictatorship.[6] The dictator founded on dogmatic rationalism emerged from a long tradition, which includes the teacher-dictator of the Enlightenment, philosophical Jacobinism, and the hoary belief in the irresistible authority of knowledge. Marxism similarly bases its claims to power on the scientific character of socialism: "Convinced Marxism holds that it has found the true explanation for social, economic, and political life, and that a correct praxis follows from that knowledge: it follows that social life can be correctly grasped immanently in all of its objective necessity and thus controlled." (53) Schmitt argues that this fusion of knowledge and domination came to Marxism from the idealist aspects of Hegel who, like all rationalists, believed that humanity emerges through consciousness which produces a liberation from empirical existence. When this theory is taken seriously by men of action, Schmitt concludes, those who feel themselves representatives of the march of the world spirit will seek to enforce the"objectively necessary" through an educational dictatorship. The claim to knowledge translates into a claim to power because the Hegelians expect that their correct understanding of the present makes them fit candidates for

6. Schmitt wrote extensively on the subject. See Schwab, *The Challenge of the Exception*, *op. cit.*, pp. 30-44.

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dictating the future.

Schmitt's critique should be distinguished from the conventional attack on democracy, which maintains that the people are, at best, too uninformed or, at worst, too stupid to rule. He does not question the political capacity of "the people." Instead, he argues that a democracy founded on "the people" has no meaning for contemporary politics. Democracy understood as the rule of the people has evolved into an ideology defending the group interests of those who claim that knowledge should translate into power. Democracy thus is the stalking horse of the dictatorship of the intellectuals. For Schmitt, those who wish to banish power through enlightenment succeed only in establishing a new hierarchy, and the liberal faith in knowledge betrays the will to autonomy. A critique of democracy could hardly be more destructive!

Many partisans of democracy would dismiss Schmitt's critique as the prejudices of a conservative. If one assumes, however, that intellectuals are not exempt from the desire for power, his argument presents a real challenge to radical democrats. The left in the U.S. and other Western countries have long been opposed by a conservative majority. This situation has led to certain theoretical paradoxes. Habermas' emphasis on an "ideal speech situation," for example, clearly expresses a democratic intention. Conforming to Schmitt's argument, Habermas has sought to open a dialogue with public opinion to liberate men from the bondage of ideology.[7] Yet such a dialogue presupposes radically unequal participants: on the one side, the enlightened intellectual, who understands both ideal discourse and the reality of ideology; on the other, the deluded majority, capable of enlightenment but incapable of winning an argument. Of course, Habermas does not propose a dictatorship. But if we assume, as does Schmitt, that education equals power, the ideal speech situation contains subtle possibilities of domination.

Schmitt's critique of Marxism does not end with the contradictions of the Enlightenment heritage. He goes further to suggest that Marx' rationalism must degenerate into a new and deeply irrational attack on liberalism. Marx transforms history into a single, final contradiction between two classes, which embody the extremes of wealth and misery, humanity and inhumanity. The evidence offered for this impending transformation of history begins with the Hegelian assumption that development implies increasing consciousness. A dialectical construction of increasing consciousness forces a thinker to think himself with his thought as the peak of development. At the same time, this signifies for him the conquest of the completely known or of the historical past. However, if a period can be grasped, the dialectical conclusion must be that the period is finished because the thinker focuses on the past and that

7. See for example Jürgen Habermas' *Technik und Wissenschaft als Ideologie*, (Frankfurt a/M: Suhrkamp Verlag, 1968), pp. 137-145 and Habermas, *Theorie des kommunikativen Handelns. Band 1: Handlungsrationalität und gesellschaftliche Rationalisierung* (Frankfurt a/M: Suhrkamp Verlag 1981), p. 188.

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part of the present which is becoming part of the past. Marx' attempt to understand the bourgeoisie through political economy was an attempt to ring the death knell of that class. Schmitt's conclusion is that Marxism can only be negative because all adequate knowledge relates to the past and nothing can be said about the future.

Returning to practical considerations, Schmitt argues that this negation can never merely remain intellectual: "the bourgeois is not to be educated but rather eliminated." The rationalist dictator thus gives way to a theory of direct action, as discussion is overcome by force. The rationalist desire to transform history ends by subverting rationalism with the irrationalist dictator. Sorel, who made the proletarian myth of the general strike central to his thought, was for Schmitt a typical example of the new irrationalism. Against this myth, the bourgeois ideal of discussion and moderation appeared empty and foolish. History pushes toward a final battle that will decide the future, and the great myth that can move men emotionally will dominate politics. Similarly, impulse becomes the true source of life because all appeals to reason appear false and fraudulent.

Schmitt's position with respect to irrationalism is crucial. His conservatism led him to select a thinker on the left in order to focus his critique of irrationalism, but his critique applies as well to the whole irrationalist rejection of modernity. He first argues that irrationalism cannot sustain itself. His logic is cogent: if the proletariat wants to be economically productive, it must follow the bourgeois rationalization of the economy. Technical rationalization, however, destroys the myth of the proletariat.[8] Since Marx accepted this rationalism and remained tied to the Western tradition, Sorel and other irrationalists emphasized his vilification of the bourgeoisie. Later, Schmitt argues, this hatred was carried eastward and reinforced the traditional Russian disgust for Western civilization. Russia under Lenin could once again be purely Russian. This development, Schmitt concluded, proved that nationalism rather than class conflict provides the most powerful myth of our time.

Schmitt also criticizes irrationalism in a typically Hobbesian fashion. A large part of Hobbes' infamy comes from his frank acknowledgement of the power of the irrational in human affairs. Yet this acknowledgement is also a critique: irrational drives that lead to war must be overcome by rational natural laws that lead to peace. Similarly, Schmitt voices the concern that the new irrationalism will lead to a pluralism of myths, a polytheistic political theology

8. Here Schmitt may be following Weber's belief that rationalization leads to a disenchantment of the world. See Max Weber, "Science as a Vocation," *From Max Weber*, eds. Hans Gerth and C. Wright Mills (New York: Oxford University Press, 1946). Lukács suggested that Schmitt continued Dilthey's and Weber's work in sociology in *Der Zerstörung der Vernunft*, *Werke*, Vol. 9, (Darmstadt: Luchterhand Verlag, 1974), p. 567. A less critical analysis of the connection between Weber and Schmitt can be found in G.L. Ulmen, "The Sociology of the State: Carl Schmitt and Max Weber," *State, Culture and Society*, Vol. 1, No. 2 (Winter 1985), pp. 3-57.

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that will destroy all remaining feelings of solidarity and bring back Hobbes' dark night of chaos.

At the end of *The Crisis of Parliamentary Democracy* the reader feels the lateness of the hour: the order that discursive reason provided for the West has decayed in favor of the irrational dogma of dictatorship. Schmitt's analysis of the early, difficult years of the Weimar Republic thus foresaw the possibility of Hitler. At the same time, *The Crisis of Parliamentary Democracy* offered few answers for the future. Schmitt saw parliamentary liberalism as helpless before its internal contradictions: the defenders of parliament would achieve nothing by arguing that parliament is the least of all possible evils. The question remained how to create order for the West.

*Political Theology* tries to overcome the crisis of liberalism by finding an ultimate grounding for political order. When order disappears, the sovereign assumes his true vocation of deciding that the state of exception (*Ausnahmezustand*) exists and what is to be done about it. The foundation of a political order is thus the will of the sovereign, who seems to stand above and outside the existing constitution. Yet Schmitt maintains that the sovereign's power to decide the state of exception is part of the legal order: "Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety." (7)[9] The state of exception and the sovereign's response cannot be circumscribed, since the situation and its solution cannot be determined with sufficient clarity. The assumption as well as the content of political competence in the state of exception are necessarily unlimited, but it is not anarchy — order still exists, although not the *normal* legal order.

Schmitt's discussion of the state of exception again reveals his debt to Hobbes. Everyone agrees that when fundamental antagonisms threaten a state, all parties want the general good. Disagreements about the general good generate the war of all against all. Added to these disagreements is the problematic character of man, this "dangerous and dynamic being."[10] Schmitt assumes that human reason cannot resolve the conflict. The sovereign ends this confusion by determining what constitutes public order, and his decision, which is neither a conclusion from logic nor a compromise of interests, provides the foundation of the legal order most people take for granted. *Political Theology* thus argues against neo-Kantians like Kelsen who claim that norms

9. Schmitt's discussion of the state of exception assumes what he calls a "commissarial dictator," i.e., a sovereign bound to a particular order. A "sovereign dictator" has the power to change the order itself. Schmitt does not equate sovereignty with a sovereign dictatorship. See Schwab, *The Challenge of the Exception*, *op. cit.*, pp. 33, 36.

10. Schmitt, *The Concept of the Political*, *op. cit.*, p. 61. In *Political Theology* Schmitt notes that every political theory must take a position on the nature of man. For the rationalism of the Enlightenment and the anarchist, man was naturally good; evil came only from theology. In contrast, a Catholic thinker of the counterrevolution, Donoso Cortés, postulated a doctrine of absolute depravity that contravened orthodox Catholic doctrine. Schmitt agrees with Cortés.

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determine decisions: "Every general norm demands a normal, everyday frame of life to which it can be factually applied and which is subjected to its regulations. The norm requires a homogeneous medium . . . . There exists no norm that is applicable to chaos." (13) The neo-Kantian desire for generality and objectivity does not provide a final grounding for law.

Appearances aside, Schmitt's decisionism differs from that of Hobbes. The author of *Leviathan* believed that reason provided natural laws which commanded the construction of the sovereign. While the sovereign had broad powers to decide the means to peace, his authority ultimately rested in a rational delegation of right from his subjects. *Leviathan* ultimately rests on the dictates of reason. *Political Theology* emphasizes the independence of the sovereign's decision from any final rational order. Accordingly, Schmitt argues that a decision by its very nature cannot simply declare the law. From the viewpoint of a fundamental norm, every specific decision is something new and alien: "The decision is, normatively speaking, born from nothing." (32) This does not mean that Schmitt is an irrationalist who glorifies instinct and feeling. It does mean, however, that where Hobbes could believe in the final authority of reason, Schmitt (like Weber and Nietzsche) believed that the progress of reason had undermined its authority and cast doubt on the possibility of rationally ordering political life. Schmitt's sovereign thus becomes a political existentialist, whose decision supports an entire world and yet knows no basis other than itself.

In the Western tradition the task of political theory has been to provide order during periods of crisis and social disintegration. The Weimar Republic was in this respect as fruitful for theory as 5th century Athens or 17th century England. Where Plato and Hobbes believed thought could provide order out of chaos, Schmitt turns away from thought at the last moment and affirms the independent action which needs no epistemological justification.[11] He even suggests that knowledge itself is an ideology masking a will to the dictatorship of the enlightened. His work, in sum, fully manifests the crisis in political thought felt by Weber and his contemporaries.

This interpretation makes clear the pathos of Schmitt's conservatism. If nothing else, a conservative accepts the authority of tradition — of the past. Schmitt paradoxically attacks tradition because the order of the past, founded on discussion, is intellectually and thus practically bankrupt. The tradition of Western political theory accepted the final authority of reason. Schmitt denies the final political validity of reason in favor of action. In short, Schmitt cannot be understood as a conservative political theorist but rather as an innovator of conservative instincts, a political theorist who is forced into change as a response to the intellectual crisis of his age. How important are his innovations?

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11. This interpretation makes clear Schmitt's differences with a rationalist like Habermas. See Wolfgang Jaeger, *Öffentlichkeit und Parlamentarismus* (Stuttgart: Kohlhammer Verlag, 1973), p. 82: "For Schmitt politics meant a decision: for Habermas, a decision should virtually be transcended by a rational consensus."

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The greatest virtue of a political realist is honesty about the worst aspects of human existence. In facing up to the reality of the state of exception, Schmitt elucidated a part of politics which many who enjoy the seeming security of a constitutional state would rather forget. But, like Hobbes, Schmitt did not apply his realism thoroughly. Both thinkers begin with a pessimistic view of human nature which requires a strong sovereign to assure order. Both suggest that nothing could be worse than a situation without authority. Both assume that a ruler, freed from the constraint of law and the threat of legitimate resistance, will rule in the common interest. This assumption, however, contradicts their general philosophical anthropology, which posits a will to power that tends toward disorder and violence. Like Hobbes, Schmitt is open to Locke's complaint that a person should not have to avoid the dangers of the state of nature by placing himself within the power of a potential tyrant. Indeed, time has made Locke's objection all the more compelling, since a tyrant armed with advanced technology can make the primitive crimes of the state of nature seem desirable. Consequently, Schmitt is all too optimistic about the motivations and actions of a sovereign in the state of exception. This criticism applies particularly to the actions of a "commissarial dictator" faced with the state of exception. In theory, this leader would take unusual measures to restore the legal order and depart from his office. Schmitt's view of man, however, implies that if a someone is given unlimited power he will seek to exploit it to the fullest. Political realism suggests, then, that the state of exception is probably the final moment of a constitutional order. By avoiding that conclusion, Schmitt could and did support the Weimar Republic. Accepting that conclusion would have led him to the liberal belief in limiting power — a dogma denied by every page of his works. The reader is left with an incoherent mixture of optimism and pessimism about man and sovereignty. The ironic conclusion is that Schmitt's major shortcoming was a lack of political realism about the sovereign.

Decisionism and the state of exception will be found in these two translations, but the greater parts of *Political Theology* and *The Crisis of Parliamentary Democracy* focus on the difficulties of the liberal order. Schmitt begins to appear primarily as a critic of liberalism rather than a defender of dictatorship. Many readers have seen in these books a vicious attack on parliamentary liberalism, designed to institute a dictatorship that would destroy the Weimar Republic. However, these new editions show that Schmitt operates at a high level of abstraction. He takes nothing less than the course of modern Western history as his subject and thus sees the difficulties of the Weimar Republic as part of a general historical problem. If this interpretation is correct, both books speak to the concerns of the present as well as those of Weimar Germany.

Schmitt presents radicals with a hard choice. If one wants democracy, one must accept the people as they are, even if they oppose social change. The alternative is an educational dictatorship that destroys democracy *and* liberalism. In the end, this dilemma may be overdrawn, and a third option that

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transforms society without contravening democracy may be possible. The danger of dictatorship remains, however, particularly for those who claim a higher consciousness, i.e., the intellectuals. Schmitt was, in retrospect, one of the first critics of the New Class.

**John Samples**

## Carl Schmitt, *Political Romanticism*, translated by Guy Oakes, (Cambridge: MIT Press, 1986), 168 pp.

In *Modern Germany: Its History and Civilization*,[1] Pinson makes three passing references to the political theorist Carl Schmitt. In one, he characterizes Schmitt as an extremely clever scholar who was, with others, responsible for the destruction of the struggling German democracy in the 1920s. In the second, with reference to the July 1932 dismissal by von Papen of the Socialist government in Prussia, he describes Schmitt as the darling of the conservatives. In the third, he writes that Schmitt "delivered the funeral oration on the 'spiritual breakdown of parliamentarism' and heralded the advent of the authoritarian and corporative state." Pinson dismisses Schmitt by comparing him to Naphta in Thomas Mann's *Magic Mountain*, about whom his antagonist Settembrini remarks: "His form was logic but his essence is confusion."[2] Pinson would be chagrined to discover that Schmitt has not faded into the never-never land of incidental footnotes, easily skipped and as easily ignored. Not only did Schmitt live until 1985, when he died at the age of ninety-six; his life and work remain the focus of scholarly attention.

Schmitt was active during the troubled years of the Weimar Republic. As a professor at Bonn (1922-1928), he was a supporter of Heinrich Brüning, the leader of the Catholic Center Party. He advocated a broad interpretation of presidential emergency powers and opposed attempts to limit such authority. He moved to Berlin in 1928, where he became an adviser to General Kurt von Schleicher and then to the Hindenburg government when Brüning became chancellor. In 1932 he argued that anti-constitutional parties (the Nazis and the Communists) should not be granted the "equal chance" available to other parties and that constitutional provisions could and should be used against those intent upon destroying the constitution.

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1. Koppel Pinson, *Modern Germany: Its History and Civilization*, (Bonn: University Press, 1965).

2. Oddly enough, the man widely regarded as Mann's model for Naphta, Georg Lukács, in 1925 favorably reviewed Schmitt's *Political Romanticism* for its critique of bourgeois culture. Later, in *The Destruction of Reason*, Lukács condemned Schmitt and much of German "bourgeois" intellectual history for having prepared the way for Hitler.

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Nevertheless, Schmitt had little trouble adjusting himself when the Nazis came to power. He accepted the Nazi party as the dominant force in German politics, announced his adherence to the new regime after the passage of the Enabling Act in March, and on May 1, 1933 became a party member. He enjoyed the patronage of Hermann Goering and Hans Frank and was regarded as one of the most important academic sympathizers of the new Reich. As Guy Oakes notes in the introduction to his translation of the expanded and revised edition of Political Romanticism, Schmitt even showed his allegiance to the new masters of German politics by inserting in his scholarly work gratuitous comments about Moses Mendelssohn, the Rothschilds and others attesting to what was termed the cunning, duplicitous and opportunistic Jewish mentality. Schmitt's association with the Nazis came to an end in 1936, when an investigation by the SS Security Service resulted in a demand that he cease posing as a Nazi theorist.

A few central ideas dominate Schmitt's philosophy of politics. Since every culture is rooted in distinctive national attitudes, any idea of universal morality and law is mere fantasy. There are only what Schmitt describes as "concrete human groupings which fight with other concrete human groupings in the name of justice, humanity, order, and peace." The question of who decides what is just or lawful, humane or peaceful, depends on historical circumstances. Schmitt was not interested in moral purpose in history. On the contrary, he continually stressed the "concrete situation" as defined by those who speak with authority. For him, obedience to the legally-constituted authority is fundamental.

The "concrete situation" is inevitably the result of conflict. Significant political action can be reduced to the struggle between friend and enemy — a situation which necessitates the drawing of an absolute distinction between oneself and the opponent. The political enemy is not necessarily morally evil; he is merely "the other, the stranger." Private feelings are not involved; the political enemy is solely the public enemy. There is no place in this interpretation for the liberal concept of politics as discussion and compromise or the liberal theory of the state *vis-à-vis* politically neutral spheres (religion, economics, family, etc). In Schmitt's view, conflict with the alien is a precondition for the state and culture to thrive: "For life struggles not with death and spirit not with spiritlessness: Spirit struggles with spirit, life with life, and out of the power of an integral understanding of this arises the order of human things."

*Political Romanticism* illustrates many of the basic premises of Schmitt's philosophy. As Oakes' points out, the thrust of Schmitt's argument is that the European bourgeoisie embraced romanticism and thereby depoliticized the liberal social order by transforming political debate into an endless conversation which rendered genuine political decisions impossible. Romanticism destroyed reality and replaced it with the dream of unlimited possibilities, thus paralyzing political action in the finite world of mundane existence. In Schmitt's definition, romanticism is "subjectivized occasionalism" which reduces politics to an exercise in artistic imagination. The romantic is aware only of fragmented occasions, to which he responds with melodious poetry, enfeebled dialectical arguments, and

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dulled moral attitudes. The attraction to the *occasio* — the incidental and startling political event without substance or function — is responsible for the romantic's impressionable attitude towards actual historical events. In retrospect, romantics "made audacious plans and bold promises. They made intimations and held out prospects . . . . But the enormous possibilities that they had opposed to history never became reality." In fact, they set themselves against history and, as "untrustworthy and superficial *litérateurs*," they substituted emotional states, personal experiences, and uncontrolled day-dreaming for the reality of political life.

To illustrate his argument, Schmitt examines the "political romanticism" of Friedrich Schlegel (1772-1823) and Adam Müller (1779-1829). Both were poor, drifting troubadors who assumed one could speak in the name of humanity and thus bring about the brotherhood of man without reference to *Realpolitik*. They were irresponsible prophets, who argued that feelings could substitute for clear analysis. In their search for some personally satisfying doctrine, they moved from one allegiance to another. Of Müller, Schmitt writes: "Because he was without his own center of gravity and not constrained by matter-of-fact experience and his own responsibility, the consistency of the view that impressed him at any given time easily carried him to the extremes of the program." Ultimately, such people became servile functionaries, allowing themselves to be used by any political system.

Oakes observes that Schmitt's attack on romanticism was basically an attack on bourgeois liberalism, that political romanticism was the consummation of the liberal movement, that the bourgeoisie became the bearer of the romantic movement and romanticism the aesthetic of the liberal middle class. Once this liberal order lost the consciousness of the foundation of culture, its awareness of the state of nature (the political), it began to formulate its own concept of culture and attempted to free itself from the state and every restriction on individual liberty. Liberalism thus leads to a distrust of all political forces but never produces on its own any positive theory of politics. There is no liberal politics, only a liberal critique of politics. Liberalism is concerned with the struggle against the power of the state in favor of individual freedom and private property. With its emphasis on the detached, isolated, and emancipated individual as the court of last resort, liberalism expresses itself as "the revolutionary demiurge" against "history as the conservative demiurge." As Schmitt writes: "The corrective to revolutionary license is the second demiurge, history. It is the conservative god who restores what the other has revolutionized. It constitutes the general human community as the historically concretized people, which becomes a sociological and historical reality by means of this delimitation and acquires the capacity to produce a particular law and a particular language as the expression of its individual national spirit. Therefore, what a people is 'organically' and what the *Volksgeist* signifies can be ascertained only historically. In addition, here the people is not its own master, as in Rousseau, but rather the result of historical development. The idea of an arbitrary power over history is the real revolutionary idea."

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Here is the crucial point in Schmitt's quarrel with political romanticism. Along with so many of his contemporaries, he was still at war with the Enlightenment (that "vulgarization in the great style") and the French Revolution. Thus, in *Political Romanticism* Schmitt calls on opponents of the Revolution — Edmund Burke, Joseph de Maistre, and Louis de Bonald — for support of his thesis that "the activity of the individual, based on rationalistic maxims, can create nothing. It can only delay, destroy, and abrogate the natural course of things; but it cannot produce anything of permanence." The Enlightenment's denial of original sin inevitably led to dreams of a new religion, a new gospel, a new creativity, and a new art. The carrier of the romantic virus was the modern bourgeoisie.

Recent interest in Schmitt is indicative of changes that have taken place in the past three or four decades. Well into the 1940s and 1950s, conservative thought was regarded as the province of cranks and anti-Semites. Hobbes was considered an anomaly, while Maistre and Bonald were dismissed as sick souls haunted by the sounds of the French revolutionary crowds. Even Burke, whose writings were given more serious attention, was seen primarily as a foil to balance the discussion. The failures of the left, dissatisfaction with middle-class politics, bankrupt political leaders, etc. have created conditions within which conservative thought has flourished.

Clearly, today the Western imagination is resting in shallow waters. But there is some stirring, and the debate over the meaning of politics may in the future take interesting turns. There is enough material now available to study Schmitt to determine what there is of value in his work that may be useful in understanding the present "concrete situation." It is ironic that all this will take place within the security of a bourgeois, liberal society still "suffering" from the romantic ideas Schmitt deplored.

**Henry Grosshans**

*Carl Schmitt nella Stampa Periodica Italiana (1973-1986)*,* edited by Centro Documentazione (Naples, 1986). 294 pp.

Before 1972 only a few Italian scholars were familiar with Schmitt's work. In August 1922 the manuscript of his *Die Diktatur* was destroyed when the fascists attacked the printing house of the socialist journal *Avanti*. This explains why Schmitt was hardly known in Italy during the 1920s, when only two reviews of his work *(Political Romanticism* and *Die Diktatur*) were published. When fascist culture sought to come to terms with National Socialism in the 1930's, interest in Schmitt was renewed. But the main credit for knowledge of Schmitt in Italy

* Translated by Camilla R. Nielsen

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belongs to Delio Cantimori.[1] Together with Karl Löwith he wrote critical essays on Schmitt and published several translations of his writings, most notably, *The Concept of the Political*. However, this interest quickly subsided. In the 1940's only a few of Schmitt's articles on international law appeared.

1972 marked a watershed in the Italian reception of Schmitt's thought with the publication of a collection of his writings and a foreward by Schmitt.[2] Since then, the Schmitt debate in Italy has attracted intellectuals from all over the world and from conflicting political perspectives: right-wingers as well as Marxists, Catholic scholars as well as laymen, legal specialists as well as sociologists.[3] But Schmitt is not just an academic topic. He is also discussed in everyday culture and politics. When he died, all major Italian papers published obituaries and extensive evaluations of his thought.

For Schmitt, a political concept is always "polemical" in that it presupposes a real adversary, a concrete situation and a political battle. Thus it is not surprising that the "academic" reception of his work has unleashed heated debates in Italy. Another factor favoring Schmitt's reception in Italy is that he was one of the great thinkers of the crisis of the *jus publicum Europaeum*. The 1970s and early 1980s were critical years for Italy. The social model on which the development of the country was based after WWII came under attack: the economy collapsed and the political system was faced with two developments: 1) demands for greater participation, and 2) attempts by the right to counter the cultural expansion of the left by increasingly authoritarian means.

The 1970's were especially critical years for a representative democracy burdened with the emergence of mass society. As the system attempted to integrate new social movements, political parties grew considerably. But their response to the crisis of representative democracy was a stopgap solution which only checked but did not resolve the crisis. In the 1980s there were less demands for participation, while the population became increasingly dissatisfied with the way representative institutions and political parties functioned. To be sure, no government was really able to take any "decisive action" and to avoid

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1. Cf. Pierangelo Schiera, "Carl Schmitt e Delio Cantimori," in *Reporter* (April 4, 1985), reprinted in the volume being reviewed, pp. 144-146.

2. Carl Schmitt, *Le Categorie del Politico*, ed. by Gianfranco Miglio and Pierangelo Schiera (Bologna: Il Mulino, 1972). This collection contains some of Schmitt's more important writings, such as *Political Theology*, *The Concept of the Political*, and *Legalität und Legitimität*. Before 1972 several articles had been translated into Italian by Delio Cantimori and published in *Principii Politici del Nazionalsocialismo*, ed. by Delio Cantimori (Florence: Sansoni, 1935). It included *The Concept of the Political*, *Staatsgefüge und Zusammenbruch des zweiten Reiches* and *Staat, Bewegung, Volk*, as well as several other articles on international law.

3. Regarding Schmitt's reception in Italy see: G. Maglieri, "La Recezione di Carl Schmitt in Italia," in *Revue Européenne des Sciences Sociales et Cahiers Vilfredo Pareto*, Vol. XVI, No. 44, pp. 81-186, and especially C. Galli, "Carl Schmitt nella cultura Italiana (1924-78), Storia, bilancio, prospettive di una presenza problematica," in *Materiali per una Storia della Cultura Giuridica*," Vol. IX, No. 1, pp. 81-160.

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the endless negotiations among the parties that made political action virtually impossible. This situation was further complicated by terrorism and a tragic series of criminal acts involving politicians.

Schmitt himself was amazed by the reception of his work in Italy. In a letter to Schiera on September 10, 1979 he wrote: "Your interest moves me; but at the same time I am wary. Today, in 1979, the situation in your country is surprisingly similar to the political-parliamentary situation of Germany in 1932. Yet there are still enormous differences. The complex situation of the Christian Democratic party in a Catholic country cannot be compared to the internal political situation of a country divided into two parties."[4] In fact, the Weimar Republic succumbed to the economic crisis and the opposition, while the Italian government has been able to absorb the most radical reactions. Nevertheless, Schmitt's ideas do have a resonance in Italian political theory and practice (specifically Machiavellian), and the "friend-enemy" conflict describes a climate of heightened ideological conflicts typical in Italy today. It is for these reasons that the volume under review is so interesting. It contains 170 articles from 50 Italian newspapers. It is not only valuable for its documentation of a cultural debate, but also as a collection of original statements by scholars with a professional stake in the subject.[5]

The first issue addressed is "The Concept of the Political." For Schmitt politics is not merely a delimited field of human activity, but rather the intensity reached by a conflict in a given situation. In this sense, politics exists before the state as an existential possibility — the state only being a historical expression of the "friend/enemy" polarity. In an interview with Bolaffi Schmitt explains how his concepts are to be understood: "One should try to define my theory of politics in such a way that it presupposes the rest of my concepts, not only chronologically but logically. Together with *Die Diktatur* and *The Crisis of Parliamentary Democracy*, I would say that my *Verfassungslehre* is a pessimistic anthropology. If I refer to it as *mine* or *yours* I am not just alluding to its polemical nature but am already defining my identity by defining the enemy." (75)[6]

Gianni Vattimo draws an interesting parallel to Schmitt's "friend/enemy" distinction: "Schmitt exemplified a way of thinking we find most recently in Benedetto Croce, for whom, as we recall, the various spheres of life are defined by specific values: beautiful or ugly in art; useful or detrimental in the economy, etc." (132) This does not mean, however, that the "friend/enemy" distinction was universally accepted in Italy. On the contrary, many found this distinction

4. Letter from Schmitt to Schiera, 10. IX, 1979, in *Espresso*, (Nov. 9, 1979), p.29.

5. Among the contributors one finds leading Schmitt scholars as well as authorities in philosophy and legal studies: Badeschi, Bobbio, Bolaffi, Cacciari, Caracciolo, Curi, Duso, Ferrara, Filippini, Galli, Magris, Marramao, Mattaucci, Mercadente, Miglio, Pasquino, Pellicani, Racinaro, Rusconi, Schiera, Severino, Tronti, Valentini, Vattino, Vece and foreign scholars such as Freund, Hennis, Kaiser, Levy, Seifert and Sontheimer. Three bibliographies on Schmitt's reception in Italy are also included.

6. Angelo Bolaffi, "Storia di un Incontro," originally in *Il Centauro*, No. 5, 1982.

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too "naturalistic" in the sense that it reduced politics from dialogue and the rational confrontation of opinions to the struggle for survival in the state of nature. Francesco Valentini, who translated *Die Diktatur* into Italian, writes: "Like all counter-revolutionary thinkers, Schmitt is a hyperpolitical thinker . . . With his polarity he ends up characterizing *war* rather that politics, i.e., the absolute antithesis, the goal of which is the annihilation of the enemy. To us it would seem that, strictly speaking, politics (with all its less attractive yet inevitable Machivellian features) implies the enemy's subjugation rather than his annihilation — and, therefore, the overcoming of the 'friend/enemy' antithesis." (4)

In spite of all the criticism it has attracted, it is also noteworthy that Schmitt's theory is still regarded as a useful hermeneutical tool even by his opponents. As Luciano Pellicani notes, "Perhaps it is not a 'Copernican revolution,' but it is certainly a significant contribution to a general theory of politics. American political scientists should also take greater heed to avoid the pitfalls of the integration model in which the world of politics is depicted idyllically as a market of values upheld by universally shared norms." (8)

In the Italian discussion of Schmitt's "friend/enemy " doctrine, the interpretation of *The Concept of the Political* by some *ouvrièriste* Marxist scholars (e.g., Tronti, Cacciari) is particularly interesting. Schmitt's claim of the specificity of "the political" and of its irreducibility to other spheres of human life, as well as his strict organization of the state, is deployed to vindicate the "autonomy of the political" in the present situation. Referring to Tronti's and Cacciari's position, Galli notes, "It is the political that gives the capitalist state its real form, delimiting its field of activity, and shaping the 'social' sphere into a realm of decision. The 'genealogy' of the political in the sense of an *arcanum imperii* of the bourgeoisie (which has hitherto allowed it to manage capitalism and its crises) also allows us to identify the field of struggle, which the left has long misunderstood, and to develop a new strategy with its own rules, independent of the social sphere." (39-40) On the other hand, this interpretation is not altogether foreign to Italian Marxism. Gramsci already produced theories on how the political element of the party (the new Prince) was to serve as the basis of a new state. His formulation of the theory of party/state relations in 1932-33 ironically coincides with Schmitt's formulation in *Staat, Bewegung, Volk*.[7] It is the movement, the political element, i.e., the confrontation with the enemy, which unites the people and gives form to the state. If one also takes the parallels between Schmitt's decisionism and Gramsci's theory of "hegemony" into account, it is no longer surprising that Schmitt appeals to some Marxists. This phenomenon, however, is not limited to Italy. Already in the 1920s a number of leftist intellectuals in Germany were attracted to theories of dictatorship and critiques of liberalism and parliamentarism. The concept of the political and of the "friend/enemy" conflict appeared to be a simple

7. Carl Schmitt, *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit*, (Hamburg: Hanseatische Verlagsanstalt, 1932).

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reformulation of the Marxist theory of class conflict. It is significant that the first conference on Schmitt organized by the Gramsci Institute in 1980 was titled "Politics beyond the State."[8]

The Marxists attracted to Schmitt were, of course, criticized by more "orthodox" Marxists and socialist intellectuals closer to liberal democratic thinking. Some have pointed to the fact that Schmitt was not "neutral" — to his personal involvement with the Nazi regime, his opportunistic antisemitism, and the counter-revolutionary position with which he is generally associated. Schmitt is seen as representing a "philosophy of the Prince" rather than a "philosophy of politics," serving the Prince rather than the people. It has also been argued that the "friendly relation" between Schmitt and the left is based on a misunderstanding: the distinction between an innovative, probing and useful "method" and the reactionary "content" to be rejected. According to Bolaffi, some leftist intellectuals have repeated Lukács' and Marcuse's errors by rejecting Schmitt's theories for "extrinsic" ideological motives, while considering the analyses and critiques of parliamentary democracy to be correct. At issue is not the condemnation of Schmitt for ideological reasons, nor the acceptance of his method; it is, if anything, the philosophical foundations of his basic ideas, the interdependence of theoretical premises and the political outcome of his thinking.

The second focus of the Italian debate is on decisionism and the critique of normativism. This issue has had a much more direct political impact. Decisionism first emerged in academic discussions, then it became widely applied to describe positions or situations that have nothing to do with what the concept originally meant. One positive result has been a new interest in "decisionism" beyond what Schmitt may or may not have meant by it. Bobbio, for example, distinguishes two levels of decisionism: the legal theory, according to which law is not the totality of norms emanating from an authority legitimized by the constitution and the procedures it spells out, and the province of a sovereign power. While normativism is based on the sovereignty of the abstract and impersonal norm, and grounds law in the universality of formal criteria, decisionism (which, as is well known, Schmitt formulates from the state of emergency in which norms are suspended while political authority remains) refers to the ability of political power to impose a stable order and thus a "normal" political situation. Outside the stable order of authority the norm is completely empty and ineffective.[9]

Bobbio further sees decisionism and normativism (the legal theories developed respectively by Schmitt and Kelsen) as representing "two sides of the same coin, i.e., the side of power and the side of law" or, to put it differently,

8. Leading Schmitt scholars (Schiera, Miglio, Tronti, Duso, Marramao, Brandualise, Biral, Galli) participated in the conference. Their papers are reprinted in *La Politica oltre lo Stato: Carl Schmitt*, (Venice: Arsenale, 1981).

9. This dynamic is analyzed in Carl Schmitt, *Die Diktatur* (Munich-Leipzig: Duncker & Humblot, 1921) and his *Political Theology*.

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the "government of men" and the "government of law." The choice between these two systems is thus ultimately "ideological," i.e., it depends on values in political theory. Whereas in decisionism the main value is the stabilization of the system at all costs (civil war, i.e., supreme chaos, is found in both Hobbes and Schmitt); in normativism the central issue is the limitation of political power to control the arbitrary forces against which the people themselves, the citizens, are defenseless. Siding with the normativists, Bobbio writes: "What has occupied political thinkers, beginning with the Greeks? First and foremost, how to tame the 'wild beast,' to quote Luther's biblical expression. Nowadays the beast can be tamed by appeals to God, by education, by the primacy of ethics or, more realistically (and here is where liberal thinking comes in), by a set of institutional devices, i.e., rules that make it possible to limit power to the greatest possible extent." (143)

The idea of taming the "wild beast" was something that also fascinated Machiavelli and Hobbes. Another notion one comes across in Schmitt's writings is the *katechon* as a power capable of holding back the beast of the Antichrist, as opposed to liberal thought, where the *katechon* is seen within the limits of political power to control human "bestiality." Bobbio is right when he states that normativism and decisionism constitute a polarity between authority and liberty, between decision and norm — an opposition which Schmitt sought to overcome with the "theory of concrete orders."[10]

In addition to the various competing theories there is yet another dimension of decisionism — the relations between legislative and executive powers on an institutional level, between parliament and the government. Bobbio sees this as the process through which a political decision evolves. In a democratic state the decision is a result of an agreement between parties or of parliamentary negotiations. The parliamentary decision is one made by the majority on the basis of political representation — the parliament representing the people's interests, not just single corporative interests — whereas a decision based on an agreement between various parties is one made outside of parliament, representing a compromise between different interests. In Italy, the government has often chosen the latter path to resolve social conflicts. Considered inadequate, parliament was bypassed in favor of party agreements. In numerous commentaries this practice has been referred to as "decisionism," implying a position that downgrades parliament and emphasizes the government's power. This, however, is not what Schmitt really meant by decisionism. It is closer to the theory of the neo-corporate state. Nonetheless, here it becomes clear that Schmitt's critique of parliamentarism is not limited to the Weimar Republic. It provides interesting insights for any political theory attempting to deal with the problem of how to govern complex societies today.

The Italian debate on Schmitt has also focussed on the term "representation"

10. Cf. Carl Schmitt, *Über die drei Arten des rechtwissenschaftlichen Denkens*, (Hamburg: Hanseatische Verlagsanstalt: 1934).

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— on Schmitt's analyses of the "theological" and "theatrical" dimension of the political. His analysis of "theological politics" and Roman Catholicism has revealed the "theological" nature of politics.[11] Historically, all modern concepts of the state are secularized theological concepts (what was once divine omnipotence has become the omnipotence of the legislator, what was the miracle is now the state of exception, etc.). Structurally, political reality reproduces the same dynamic relations present in theological reality. This second level becomes clear when one considers political power which mediates between the real and the ideal, between the universality of law and the empirical specificity of the individual. Between these two levels there is an abyss, a rift in need of mediation, since the universality of the norm is not automatically applicable to the particular, remains alien to it, while the particular cannot raise itself to the level of the universal. The state carries out this mediation through law.

This model can be easily recognized as one mortgaged by Catholicism. On the one hand, there is the infinity of God, on the other, there is the finitude of sinful man. Only a "mediator" can fill the abyss between the infinite and the finite, and this mediator is Christ himself, the son of God: the Logos that becomes flesh and redeems reality, finitude. Historically, Christ's mediation is followed by the Church, which maintains within itself the same *complexio oppositorum*: the union of the infinite and the finite. The Church *represents* Christ's mediation, the absoluteness of a divine power that embodies the world, i.e., it "secularizes" itself to give the earth form and order. In modern times, Schmitt sees this function of the Church being passed to the state. Under a worldly guise, the state maintains the theological structure of a "representative" sovereign, of absolute mediation from above. Thus political power cannot originally be a rational creation of man but must also have a mysterious, theological core.[12] However, the "representative" character of the political reaches beyond the theological. The term "representation" evokes the world of the theater: "A king is always on stage." Schmitt quotes this to describe the irreducible "drama" of the political. The world of the political is a "theater" in which something is being presented while something else is hiding behind the scenes. The technique of the theater is based on this dialectic of revelation and concealment. In this same way politics reveals and conceals: the *arcana imperii*.

In Italy Schmitt's vision triggered an interesting debate, especially after the translation of *Hamlet oder Hekuba*;[13] which was primarily understood as a response to the "new politics" that began with the post-ideological era. The great

11. Carl Schmitt, *Political Theology*, *op. cit.*; *Römischer Katholizismus und politische Form*, (Hellerau: Jakob Hegner, 1923), and also *Der Wert des Staates und die Bedeutung des Einzelnen*, (Tübingen: J. C. B. Mohr [Paul Siebeck], 1914) und "Die Sichtbarkeit der Kirche. Eine scholastische Erwägung," in *Summa*, Franz Blei and Jakob Hegner (eds.), Vol. I, (1917-18), No. 2, pp. 71-80.

12. In this context see in particular R. Esposito, "Schmitt e Guardini," in *Alfabeta*, (September, 1985).

13. Carl Schmitt, *Hamlet oder Hekuba. Der Einbruch der Zeit in das Spiel* (Düsseldorf-Cologne: Diederichs Verlag, 1956).

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ideological clashes and intensified social conflicts which characterized the politics of the 1950s, 1960s and 1970s resulted in the introduction of the "political spectacle," i.e., a politics that increasingly employs "images," symbolic language, the stage. This theatrical dimension is not separate from but rather intrinsic to politics. To say that politics reveals and conceals itself in a theatrical sense implies that it cannot be reduced to a transparent rationalism. It maintains a core that is obscure, mythical, theological and irrational. For Schmitt, recourse to myths and symbols is not just a literary device or an aesthetic ornament; it is an epistemological necessity: politics cannot be fully developed in the transparent language of scientific rationalism. Of course, Schmitt does not deny that reason can capture conceptually the essence of politics. He is, however, aware of its limits in the same way that the theologian knows the limitations of rationalizing the divine. Here we have the antipodes of an Enlightenment vision of politics with all the risks it implies.

In the Italian debate on these subjects, other issues are addressed as well: terrorism as a crime and belligerent act (notably in *Theorie des Partisanen*),[14] geopolitics, i.e., the relation between geography and politics (e.g., *Land und Meer*),[15] the notion of the guardian of the constitution ( *Der Hüter der Verfassung*.)[16] Nevertheless, totalizing interpretations of Schmitt's thought are still too few and far between.[17] As for Schmitt's reception in Italy, Claudio Magris writes: Schmitt's present popularity is a seduction . . . a ritual that fascinates and dazzles . . . Everyone who reads or quotes Schmitt encounters and repeats these electrifying and fatal intuitions that unmask the world and its laws, resembling some of Nietzsche's aphorisms, concentrating on the void or the absolute . . . Schmitt's ingenuity and salutary pessimism justify this fascination, which is much more lucid and sober that that of many of his followers, who are blinded by his lucid and sober nihilism. He has brought politics back in context with the demonic character of life, into the maelstrom of elementary forces and mysteries. He has merged technology and theology, the daily contingencies of politics with the great metaphysical forces that nurture politics." (125) Even if Italian culture has succeeded in overcoming all ideological prejudices with regard to Schmitt, there is an uncritical fascination with his work. The return to a philologically rigorous approach would allow his work to be interpreted globally against the background of 20th century European legal and political thought.

**Michele Nicoletti**

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14. Carl Schmitt, *Theorie des Partisanen: Zwischenbemerkungen zum Begriff des Politischen* (Berlin: Duncker & Humblot, 1964).

15. Carl Schmitt, *Land und Meer: Eine weltgeschichtliche Betrachtung*, ( Leipzig: Reclam, 1942).

16. Carl Schmitt, *Der Hüter der Verfassung* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1931), *Verfassungslehre* (Berlin: Duncker & Humblot, 1928).

17. For an interesting effort in this direction, see George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970).

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